THE

NEGOTIABLE INSTRUMENTS ACT, 1881.

THE

NEGOTIABLE INSTRUMENTS ACT

(ACT XXVI. OF 1881):

BEING AN ACT TO DEFINE AND AMEND THE LAW

RELATING TO

Promissory Notes, Bills of Exchange and Cheques.

EDITED BY

M. D. CHALMERS, M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,

Author of "A Digest of the Law of Bills of Exchange," &c., and Editor of Wilson's "Judicature Acts."

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INTRODUCTION.

§ 1. The Indian Negotiable Instruments Act reproduces in a statutory form the English law of negotiable instruments with scarcely any modification. It in effect codifies the existing English law on the subject, and even faithfully reproduces such anomalies as days of grace, the dubious rule as to conditional indorsements, and the negotiability of a bill indorsed without words authorizing transfer. In the few points in which the Code departs from English law it is not always very clear whether the departure is intentional, or whether it is merely due to accidents of drafting. Plan of edition.

In this state of things it is clear that the English reported cases, which embody the rules of English law, are all more or less relevant as illustrating and explaining the propositions of the Indian Code. It becomes therefore a question of discretion, how far it is profitable to reproduce them by way of commentary. Where a proposition laid down by the Code appears simple and exhaustive of the subject matter, any lengthy reference to the English decisions which originally worked out the rule would tend rather to obscure than to elucidate the meaning of the Act. The provisions of the Act of course are authoritative, without any regard to the decisions which originally suggested them. In such cases, therefore, I have merely stated in a note that the Indian and English laws are in accord, and have given a

reference to support the statement. Where there is any leading case in point I have cited it, but where the decisions are numerous, or unsatisfactory, I have simply given a reference to my own work on the English law, where the authorities will be found collected and commented on.[1] The first edition of this book was published in 1878, but the numbering of the articles in the second edition has not been changed. It is written in the form of the Indian Codes, that is to say, propositions, explanations, and illustrations, and for the most part the sections of the Act and the articles of the Digest very nearly correspond. Where a proposition laid down by the Code appears to depart from English law, I have pointed out how and in what the difference consists, briefly stating what the English law is. Where the propositions of the Code appear to require further elucidation, I have referred to English decisions to illustrate them, sometimes citing short passages from the reported judgments, when I have come across a terse and lucid explanation of the principles on which the rules of law in question are founded. This course is perhaps convenient, because Indian lawyers and merchants have not always English law reports ready to hand. Occasionally, by way of illustration or explanation, I have referred to the provisions of some of the Continental Codes. Where the provisions of the Foreign Codes differ from those of the Indian Act, such references may be useful as indicating the cases where the provisions of Chapter XVI. (International Law) are likely to come into play.

English authorities.

§ 2. As the Indian Act, in so far as it deals with any subject, adopts and enforces English law almost in its entirety, it is conceived that in matters relating to

[1] See "Chalmers' Digest of the Law of Bills of Exchange, Promissory Notes, and Cheques," 2nd ed., 1881. Stevens and Sons, London.

negotiable instruments which are untouched by the Act (and which do not come within the scope of the Indian Contract or Evidence Acts), English law would be looked to and followed as a guide. It is only in this way that a harmonious system could be worked out. A specific English decision, of course, would not be binding on the Indian courts, but when well reported it would doubtless be treated with respect, as being a responsible exposition of principles which govern alike in the courts of both countries. What Lord Chief Justice Cockburn in a recent case (*Scaramanga* v. *Stamp*, 5 C. P. D. 295, at p. 303 C.A.) says concerning the weight to be given to American decisions, bears nearly upon the weight to be given to English decisions in India. A new point having arisen as to the deviation of a ship from her chartered voyage, he says, "The case before us presents itself, so far as our Courts are concerned, as one of first impression, on which we have to declare, or perhaps I may say, practically to make the law. I am glad to think that in doing so we have the advantage of the assistance afforded to us by the decisions of the American Courts and the opinions of American jurists, whom accident has caused to anticipate us on this question. And, although the decisions of the American Courts are of course not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of the law—a law, except so far as altered by statutory enactment, derived from a common source with our own—entitle their decisions to the utmost respect and confidence on our part."

History of act.

§ 3. The history of the present Act appears to be as follows:—The original draft was prepared in 1867, by the Indian Law Commission; among other distinguished members that Commission included Lord Justice James, Lord Justice Lush, and Mr. Lowe (now

Lord Sherbrooke). Mr. William Macpherson was the Secretary, and Mr. Neil Baillie, I believe, the assistant Secretary. The Report is a most valuable one. The Draft Bill was sent out to India, but for some reason I am not aware of, the project slept for some years. In 1879, the Bill was re-drafted by Mr. Phillips, of the Calcutta Bar. Criticisms were then invited on it from the banks, chambers of commerce, and leading merchants, and it was revised by a select committee consisting of the Advocate-General of Bengal, Mr. Evans, and Mr. Morgan. It was then referred to the Indian Law Commission, which sat at Simla in 1880. The Commissioners (Chief Justice Turner, Mr. Justice West, and Mr. Whitley Stokes) reported that they "found little or nothing to change in the Bill," but they suggested certain additions.[1] Finally the Bill was again referred to a select committee, and received the assent of the Governor-General on the 9th December, 1881.[2]

The measure, then, has not been passed without long and anxious consideration. Doubtless time will disclose certain defects in some of its details, but now that the law is put in a definite and accessible shape, it will be easy to remedy them. The clear and concise statement of the principles of the law of negotiable instruments in the authoritative form of an Act will be an immense boon to the mercantile as well as to the legal world.

Origin and history of negotiable instruments.

§ 4. Since, as has been pointed out, the Indian Code preserves and embodies the English law relating to negotiable instruments, it may not be out of place briefly to trace their history and note the mode of their development in England. For this purpose I may make use of part of the paper which I recently read at the Midland

[1] See Supplement to *Gazette of India*, January 24, 1880, p. 207.
[2] Ibid., December 17, 1881.

Institute, and which formed part of a course of lectures delivered to the Birmingham bankers. After commenting on the essential features of negotiable instruments which distinguish them from other contracts in writing, the paper proceeds :—

"To sum up, then, the law relating to negotiable instruments consists of two distinct sets of principles derived from different sources, namely, (1) principles applicable to ordinary contracts derived from the Common Law; (2) principles imported by the law merchant founded on the usages of trade.

"The original and most typical negotiable instrument is the Bill of Exchange. Bills of Exchange are supposed to be of comparatively modern origin, having been first brought into use, so far as is at present known, by the Florentines in the twelfth, and by the Venetians about the thirteenth century.[1] The use of them gradually found its way into France, and still later, and but slowly, into England. Richard Malynes, a London merchant who published a work called the Lex Mercatoria in 1622, and who gives a full account of these bills as used in Amsterdam, Hamburg, and other places, states that such bills were not in use in England. Mr. Macleod, who has investigated the early history of bills, thinks that this is a mistake. As early as the statute 3 Richard II., c. 3, Bills of Exchange are referred to as a means of conveying money out of the realm, though not as a process in use among English merchants. But the fact that a London merchant writing expressly on mercantile law was unaware of the use of Bills of Exchange in this country, shows that the use of them at the time he wrote must have been very limited. With the development of English commerce the use of these most convenient

[1] Cf. *Goodwin* v. *Robarts*, 10 L. R. Ex., at 347.

instruments of commercial traffic would, of course, increase. As the use increased, disputes would necessarily arise, which, in time, would find their way into the Law Courts, and thence into the volumes of the reports. As a fact, the first reported case on a Bill of Exchange is the case of *Martin* v. *Boure*, which was reported in 1603. About this time, that is to say in the early part of the seventeenth century, the practice of making bills payable to order and of transferring them by indorsement first took its rise. Hartman, a German author, states that the first known mention of the indorsement of these instruments occurs in the Neapolitan Pragmatica of 1607. As regards England, at first the use of Bills of Exchange seems to have been confined to foreign bills between English and foreign merchants. It was afterwards extended to inland bills between traders, and finally to bills of all persons whether traders or not. In the meantime Promissory Notes had also come into use. They were at first made payable to bearer, but when the practice of making Bills of Exchange payable to order, and making them transferable by indorsement, had become firmly established, the practice of making Promissory Notes payable to order, and of transferring them by indorsement, as had been done with bills, speedily prevailed. There are several reported cases during the last years of the seventeenth century which recognise the custom. But when Lord Holt became Chief Justice, a somewhat unseemly contest arose between him and the merchants as to the negotiability of Promissory Notes whether payable to order or to bearer; the Chief Justice taking what must now be admitted to be a narrow-minded view of the matter, setting his face strongly against the negotiability of these instruments, contrary, as we are told, to the opinion of Westminster Hall, and in a series of

successive cases persisting in holding them not to be negotiable by indorsement or delivery. The inconvenience to trade arising therefrom led to the passing of the statute 3 and 4 Anne, c. 9, whereby Promissory Notes were made capable of being assigned by indorsement, or by delivery if made payable to bearer, and such assignment was thus rendered valid beyond dispute or difficulty.

"We now arrive at an epoch when some form of security for money, namely, goldsmiths' or bankers' notes, came into general use. Their negotiability was finally affirmed in the case of *Miller* v. *Race*, in 1778. Lord Mansfield there held that the property in such a note passes like that in cash by delivery, and that a party taking it *bonâ fide*, and for value, is consequently entitled to hold it against a former owner from whom it has been stolen.

"Next we come to the age of cheques. By the beginning of this century they had established their footing in England, and had been formally received into the family of negotiable instruments. In France, curiously enough, cheques do not seem to have received legal recognition until the law of 1865.

"The efficacy of mercantile usage has again been vindicated in a recent decision of great importance. In the case of *Goodwin* v. *Robarts* (10 L.R. Ex. 337), the question arose whether scrip payable to bearer constituted a negotiable security. Some Russian scrip payable to bearer had been misappropriated by an agent who pledged it with his bankers as security for a loan. They of course took it in perfect good faith. Then came the question, had they acquired a good title to it? On the one hand it was proved that in the City it was treated as negotiable just as if it were a Promissory Note payable to bearer. On the other hand it was urged that the law merchant as to negotiable instruments was fixed and settled, and that custom could not avail to

add fresh instruments and securities to the existing list. The Court upheld the custom, and held that for the purpose of the question raised, scrip must be held to be negotiable, and that the bankers had acquired a complete title to it. I cannot do better than conclude this introductory portion of my lecture by quoting another passage from the judgment of the late Lord Chief Justice Cockburn, who delivered the unanimous judgment of the Exchequer Chamber in that case. After tracing the origin and history of negotiable instruments, he proceeds :—

"'Usage adopted by the Courts having been thus the origin of the whole so-called law merchant as to negotiable securities, what is there to prevent our acting upon the principles acted upon by our predecessors, and followed in the precedents they have left to us? Why is it to be said that a new usage which has sprung up under altered circumstances is to be less admissible than the usages of past times? Why is the door to be now shut to the admission and adoption of usage in a matter altogether of cognate character, as though the law had been finally stereotyped and settled by some positive and peremptory enactment? It is true that this scrip purports on the face of it to be a security, not for money but for the delivery of a bond; nevertheless we think that substantially and in effect it is a security for money, which, till the bond shall be delivered, stands in the place of that document which, when delivered, will be beyond doubt the representative of the sum it is intended to secure. The usage of the money market has solved the question whether scrip should be considered security for and the representative of money, by treating it as such.

"'The universality of a usage voluntarily adopted between buyers and sellers is conclusive proof of its being in accordance with public convenience; and there

can be no doubt that by holding this species of security to be incapable of being transferred by delivery, and as requiring some more cumbrous method of assignment, we should materially hamper the transactions of the money market, and cause great public inconvenience. It is obvious that no injustice is done to one who has been fraudulently dispossessed of scrip through his own misplaced confidence, in holding that the property in it has passed to a *bonâ fide* holder for value, seeing that he himself must have known that it purported on the face of it to be available to bearer, and must be presumed to have been aware of the usage prevalent with respect to it in the market in which he purchased it.'

Present state of English law.

§ 5. "I have troubled you with this rather long quotation because it is a good illustration of the attitude of our Courts in respect to mercantile matters, and because it gives you an insight into the actual mechanism by which our law merchant is produced. Speaking broadly, if I may make use of an analogy, mercantile usage is the raw material, mercantile law is the manufactured article. The result of this piece-meal manufacture is pretty much what might be expected of it. Regarded as a whole, our mercantile law is fairly in accord with the practice and the convenience of the mercantile community. In other words, the substance of it is good. As regards negotiable instruments most of the law is well ascertained, but on a few points there is a lack of authority; and on a few other points the law is antiquated, the custom having been ascertained, and so to speak crystallized into judicial decisions, a long while ago, when the conditions of commerce were very different to what they now are. In form our mercantile law is of enormous bulk and hopelessly unsystematic. To give you some idea of its bulk, Daniell on Negotiable Instruments, a recent

American work, cites upwards of 7,000 cases. These cases are scattered haphazard up and down in the columns of reports. Taking a rough average, if you wanted to have them all you would have to purchase from 1,500 to 2,000 volumes. In the reports, as I dare say you know, the decisions of any particular Court are reported in merely chronological order, so you have a Bill of Exchange case sandwiched in between say, an action for trespass to land on the one hand, and an action for breach of promise of marriage on the other. If you could collect together all the cases on negotiable instruments quoted in Daniell, you would have a series of volumes containing about 35,000 pages."

The Indian Code consists of 137 sections, and occupies 12 pages of the *Gazette;* yet it deals with most of the questions raised in the voluminous literature on the subject, and in addition settles several points which the reported cases have still left open to doubt. An attempt is now being made to codify the law of negotiable instruments in England. Last year, under instructions from the Institute of Bankers and Associated Chambers of Commerce, I drafted a Bill on the subject which was introduced into Parliament under the title of the Bills of Exchange Bill, 1881. It was read a second time in August, but was then massacred with the other innocents at the end of the session. It is to be reintroduced this session, but in the present state of Parliamentary business it is impossible to predict what its fate is likely to be.

Comparison of English and foreign laws.

§ 6. All the Continental nations have codified their laws relating to negotiable instruments. Borchardt, in his collection of the laws of various nations on this subject, gives the provisions of more than forty Codes. Anything like a detailed examination of foreign systems would be mere waste of time and space, but some knowledge of the

salient points of difference is desirable in the case of contracts so cosmopolitan as are negotiable instruments. A Bill of Exchange is a true citizen of the world. It travels freely from country to country, and for certain purposes is domiciled in every country where it is either drawn, or indorsed, or accepted, or paid. For the purpose of comparing the English (or Indian) law with the Foreign Codes, I may make use of some extracts from a paper which I read in 1879 before the Institute of Bankers.[1] After commenting on the unwieldy bulk of English law as compared with the compactness of the Foreign Codes, the paper proceeds :—

"Passing from mere differences in form and expression, I will now call your attention to some of the more important divergencies in substance between our law and that of other countries. There is, of course, great and substantial similarity between the laws of all mercantile nations regarding negotiable instruments. If it were not so, the vast international transactions which are effected through their agency, would be impossible. Bills could no longer circulate freely from country to country. Mr. Justice Story, the great American commercial lawyer, in a well-known judgment[2] forcibly expresses this truth. He says, 'The law respecting negotiable instruments may be truly declared, in the language of Cicero, to be in a great measure not the law of a single country only, but of the commercial world—"non erit lex alia Romæ, alia Athenis, alia nunc alia post hac, sed et apud omnes gentes et omni tempore una eademque lex obtinebit."' But when we pass from broad general principles to questions of detail, we find, as we should expect, that the various

[1] "On the Difference between the English and Foreign Systems of Law regarding Bills of Exchange, and their Relative Merits," reprinted in the Journal of the Institute, vol. i., p. 239.

[2] In *Swift* v. *Tyson*, 16, Peters Rep. 1.

problems which have arisen have been differently solved by different nations. For purposes of comparison I shall use chiefly the French Code de Commerce, and for this reason. It is in many respects a typical code. The French Code passed in 1818 forms the basis of nearly all the Continental Codes. Most of the important Continental nations have adopted its provisions regarding negotiable instruments with but slight modifications. For instance the Italian Code of 1865 enacts for Italy the provisions of the French Code regarding bills and notes, merely adding three or four articles which embody the result of French judicial decisions on the construction of the Code. The Belgian Exchange Law of 1872, with a few exceptions, does the same for Belgium. Egypt, Greece and Turkey have, I believe, adopted the provisions of the French Code in their entirety. The Spanish Code of 1830 and the Portuguese Code of 1833 are mainly founded on the French. The German Exchange Law of 1849 differs from the French Code in many important particulars, but for the most part where it diverges from French law it is in strict accordance with English law. I have then chosen the French Code as furnishing the best standard of comparison, and I shall only refer to the other Codes incidentally. But before I go into details of comparison I wish to call your attention to a question of historical interest and some practical importance. If you refer to English authors who wrote on Bills of Exchange 150 or 180 years ago, such as Marius and Beawes, and compare the law, or rather the usage, of that time with the law as it has now been settled, you will find that the old usage has been modified in many important respects. If you then take the points of divergence between modern English law and old English usage, and compare them with modern French law, you will find that for the most

French Code de commerce.

part French law is in strict accordance with the old English usage. The reason is not far to seek. At the time that Beawes wrote, the law or practice of both nations respecting Bills of Exchange was uniform. The French law, however, was reduced into writing, and embodied in a code by the 'Ordonnance de 1673,' which is amplified, but substantially adopted by the Code de Commerce of 1818. Its development was thus arrested, and it remains in substance what it was 200 years ago. English law, as we have seen, has been developed piecemeal by judicial decision founded on custom. The legislature has interfered but seldom, and then only on minor points of detail. Thus in England full play has been given to the 'laissez faire' principle. The custom, of course, has changed from time to time in accordance with the changing needs and practices of commerce. So much for the historical part of the question. But when we come to examine the effect of the divergencies from ancient usage we find they are not merely fortuitous Unconsciously perhaps, but none the less certainly, English law has worked out a theory of negotiable instruments widely different from the original. The modern English theory might be styled the banking or currency theory, as opposed to the French or mercantile theory. A Bill of Exchange in its origin was an instrument by which a trade debt due in one was satisfied by payment in another. It was merely a device used by merchants trading at a distance from each other to avoid the necessity of transmitting cash from place to place. For instance, Smith, in London, owes £100 to Brown, who is in New York. But Brown, in New York, owes £100 to Jones, in London. Both these debts can be paid without any trans-shipment of money, if Brown draws a bill on Smith in favour of

Jones, and sends it to Jones, who collects it in London. This, the original theory, French law steadily keeps in view. In England, on the other hand, bills have developed into a paper currency of perfect flexibility. In France a bill represents a trade transaction. In England it is merely an instrument of credit. As a result, English law gives full play to the system of accommodation paper. French law endeavours to suppress the system of accommodation paper in every possible way. The comparison of some of the main points of difference between English and French law will show how the two theories are worked out. According to Article 110[1] of the French Code a Bill of Exchange may not be made payable in the place where it is drawn. You can't draw a bill in Paris, making it payable also in Paris. If the bill shows on the face of it that it is both drawn and payable at Paris, it is invalid as a negotiable instrument. If to avoid this provision of the code, the bill is dated from London, though, in fact, it is drawn in Paris, it is invalid in the hands of any holder of with notice. A French bill must be drawn in one place and payable in another. No distance is fixed by the Code, but it has been judicially decided that the place of payment must be so far distant from the place of issue that there may be a possible rate of exchange between the two.[2] In the technical phrase of French lawyers a Bill of Exchange presuppoess a contract of exchange, that is to say, it presupposes a *bonâ fide* money transaction between places at a distance from each other, into which the rate of exchange between the two places enters as a necessary element. There are traces that this rule once prevailed

Rule of *Distantia loci.*

[1] Cf. also Italian Commercial Code, Art. 196; Spanish Code, Art. 249; Portuguese Code, Art. 321, to same effect. It is said that the French Courts now hold that this provision is merely directory.

[2] Nouguier, Des Lettres de Change, 1875, 4 ed. §§ 93–105. Bravard-Demangeat, 7 ed., p. 226.

in England,[1] but now, as you know, you may draw a bill in one house, making it payable next door. The effect of this provision of the French Code in obstructing the issue of accommodation paper is obvious.[2]

Statement of value received.

"Again, by a further provision of Article 110, which enumerates the essentials of a valid bill, it is enacted that a Bill of Exchange must specify the nature of the value received for it. For instance, it is not enough to say merely 'value received.' You must say 'value received in goods,' or 'value received in cash,' 'value in account,' or whatever it may be. If no value be stated, the instrument is invalid as a bill. If a false value be stated, the instrument is invalid in the hands of all parties with notice.[3] So, too, by Article 137, an indorsement must specify the nature of the value received by the indorser. If it do not specify the nature of the consideration it does not transfer the property in the bill to the indorsee, but merely makes him a kind of agent for collection for the indorser. It is evident that these provisions strike at the very root of the system of accommodation paper. In England the nature of the value given for a bill is not often expressed on it, and it is not necessary to express at all that value has been received for it, for the law raises a *primâ facie* presumption to that effect. Formerly, however, it seems the law was otherwise.[4]

Bills to bearer.

"By another provision of Article 110 of the Code de Commerce, a Bill of Exchange must be drawn payable to order.[5]

[1] See the definition of a Bill of Exchange in Comyn's Digest, Tit. Merchant F. 4. "A Bill of Exchange is, when a man takes money in one country or city upon exchange, and draws a bill whereby he directs a person in another country or city to pay so much to A, or order for value received of B. and subscribes it."

[2] Cf. also Spanish Code, Art. 426; Portuguese Code, Art. 321; Russian Code, Art. 295; Italian Code, Art. 196.

[3] Nouguier, 4 ed., §§ 164-191.

[4] Chitty on Bills, 1st ed., p. 9.

[5] Cf. also Spanish Code, Art. 439; Portuguese Code, Art. 321; Russian Code, Art. 295; Italian Code, Art. 196. This was formerly the rule in England. *Stewart* v. *Hodges* (1092), 12 Mod. 36.

A French bill expressed to be payable to bearer would be invalid. In England it has been decided that a bill may be drawn payable to bearer though formerly this was doubted.[1] This provision of Article 110 is necessary in order to render effectual the rule requiring the nature of the value given to be specified. If a bill could be drawn payable to bearer it would be difficult or impossible to find out whether the nature of the value given had been truly specified or not.

Indorsements in blank.

So, too, by Article 137, an indorsement, in order to transfer the property in a bill to the indorsee, must specify the name of the indorsee as well as the date, and the nature of the value given. An indorsement wanting in any of these conditions, and, therefore, *a fortiori* an ordinary indorsement in blank, does not pass the property in the bill to the indorsee; but, according to Article 138, merely takes effect as what the French law calls a 'procuration.'[2] The exact effect of this term it would take some time to explain, but speaking generally, I may say that the effect of an indorsement in blank in France is to make the holder, as regards third parties at any rate, a kind of agent for collection for the indorser.[3] When, as a fact, the holder under a blank indorsement has given value, it is held that he may fill it up as a regular indorsement, and thus become the true owner of the bill.

Dishonour by non acceptance.

"I now pass on to notice a rule which is, I believe, peculiar to English law, and the countries where the English law prevails, as it does, for instance, in the majority of the American States. In England when a Bill of Exchange is refused acceptance, the holder may at once treat it as finally dishonoured, and resort for payment to the drawer and indorsers, without waiting for the maturity of the

[1] Cf. *Grant* v. *Vaughan*, 1764, 3 Burr. 1516.

[2] Cf. Italian Code, Art. 223; Spanish Code, Arts. 466, 467; Russian Code, Arts. 310, 312.

[3] See Nouguier, 4 ed., ss. 744-797.

instrument, or again presenting it to the drawee. His right of action is complete as soon as he has given proper notice of dishonour.[1] This rule is a logical consequence of the currency theory as applied to Bills of Exchange. The tendency of that theory is to regard a dishonoured bill in the same light as a bad sovereign. Under the Continental Codes the holder of a bill which is refused acceptance can only demand security from the drawer and indorsers.[2] When the bill arrives at maturity the holder must again present it to the drawee, and if it be dishonoured a second time he may then exercise his right of recourse against the drawer and indorsers. In theory, the English rule seems to involve this anomaly. The holder of a bill, which is refused acceptance, might receive the full amount of it from the drawer or an indorser some time before he would be entitled to payment, if the bill had been accepted. *Pro tanto*, therefore, he would gain by its dishonour. I do not know, however, that any practical mischief results from the application of the English rule.

Present-ment and notice.

"To come to another point, when a bill is accepted, the acceptor must pay it, whether it be presented to him on the day it matures, or on any other subsequent day; but in England, subject to certain exceptions in the case of accommodation bills,[3] the drawer and indorsers are discharged if the holder does not present the bill for payment on the day that it falls due, and then give proper notice of dishonour. This rule is another application of the currency theory to Bills of Exchange. It is in principle the same as the rule that if you take a bad sovereign

[1] Chalmers on Bills, Art. 157, and see Art. 220.

[2] German Exchange Law, Art. 25; French Code, Arts. 119, 120; Italian Code, Arts. 206, 207. This rule, probably, formerly prevailed in England. Cf. Anon, 1700, 1 Ld., Raym. 743.

[3] Chalmers on Bills, Art. 200.

you must either return it as soon as you can, with ordinary care find out that it is bad, or you must take the consequences. In France, if the holder of a bill do not duly present it for payment, and give notice of protest (which corresponds to our notice of dishonour), the indorsers are discharged, but the drawer is not discharged unless he can show affirmatively that he had provided the acceptor with funds to meet it.[1] Under the German Exchange Law,[2] as under English law, the omission to present a bill for payment on the proper day deprives the holder of his right of recourse against the drawer and indorsers, but the omission to give due notice of dishonour merely deprives him of his right to recover interest and expenses, unless the drawer or indorser sought to be charged can show actual damage caused by the want of notice. I have now, I think, adverted to the main points of divergence between English and French law, in so far as they bear upon the different theories held in the two countries as to the proper functions of a Bill of Exchange. English law regards a bill merely as an instrument of credit. French law regards it as strictly subsidiary to a *bonâ fide* trade transaction. The relative advantages of the rival theories is a mercantile or economical question rather than a legal one. I have, therefore, not attempted to discuss it, but I hope that some of you who are here this evening will give us the benefit of your skilled opinions on the subject.

Days of grace.

"I will now call your attention to one or two points of divergence between English and foreign law, where the different rules may each be judged on their own merits, as they seem to have no bearing on any underlying general principle. Article 33 of the German Exchange Law abolishes days of grace. Article 135 of the French

[1] French Code de Commerce, Arts. 168, 170.
[2] German Exchange Law, Arts. 41, 44, 45.

Code de Commerce, and Article 221 of the Italian Code do the same, and most of the Foreign Codes, I believe, contain a similar provision. In England, as you know, three days of grace attach to every bill which is not in legal effect payable on demand. I use the term legal effect, because by statute[1] a bill expressed to be payable 'at sight,' or 'on presentation,' is to be deemed payable on demand, and, therefore payable without grace. The result is that if you draw a bill payable thirty days after date, it is really payable thirty-three days after date. It seems to me the Foreign Codes are right in abolishing days of grace. If you mean a bill to be payable thirty-three days after date, why not say what you mean? The English rule might mislead a foreigner, and can do no good to a native.

"Passing from the subject of days of grace, I would call your attention to a cognate point which English law treats in a somewhat anomalous manner. Under Art. 134 of the French Code de Commerce, when a bill falls due on a non-business day (féric légale) it must be presented for payment on the preceding day. By Art. 92 of the German General Exchange Law, when a bill falls due on a non-business day it must be presented for payment on the succeeding business day. But in England, as you know, when a bill falls due on Sunday, Christmas Day, Good Friday, or on a day appointed by Royal proclamation for a fast or thanksgiving day, it is deemed to be due on the preceding day, while, if it falls due on a Bank Holiday, it is deemed to be due on the succeeding day. Clearly, this inconsistency ought to be removed, and it seems to me that the German rule, which is adopted by the Bank Holidays Act, is the soundest. Public holidays.

"I will take another point. The rule of English law is, Bills after sight.

[1] 34 & 35 Vict., c. 74.

that a Bill of Exchange drawn payable at a fixed period after sight, must be presented for acceptance within a reasonable time. It is not always easy to say what is a reasonable time. When the case comes before a court of law, regard is had to prior decisions, the particular circumstances of the individual case, and the usage of trade with respect to similar bills. The Court, with the assistance of the jury, then determine whether the particular presentation was or was not made within a reasonable time; but no universal rule can be laid down. Under the Foreign Codes, bills payable after sight must be presented for acceptance within fixed limits of time. These limits vary according to the distance between the place of issue and the place of acceptance.[1] Thus all the parties to the bill know from the commencement what their exact position is, and can act accordingly. For instance, according to French law, a bill drawn anywhere in Europe on Paris must be presented for acceptance within three months of its issue; and a bill drawn in America on a place in France, must be presented within six months of its issue. The Foreign Codes further lay down that a bill payable 'at sight' must be presented for payment within the same limits of time that a similar bill payable 'after sight' must be presented for acceptance. English text books lay down that a bill payable at sight must be presented for payment within a reasonable time; but, strange to say, there is no English reported decision on the point.

Protest. "To go on to another instance. By English law a foreign bill, when dishonoured, must be protested; but no noting or protest is necessary in the case of the dishonour of an inland bill or note. Under the Continental

[1] Cf. French Code de Commerce, Art. 160, as modified by law of 3 May, 1862; Italian Code, Art. 240. German Exchange Law, Art. 19, seems to give two years, irrespective of distance.

Codes, every dishonoured bill must be protested. For legal purposes, I think it would be convenient if in England every dishonoured bill was required to be noted. If such a change in the law were made, it would be necessary to invest more persons than at present with notarial powers; but I am not aware that there is any objection to this being done.

Conditional acceptance.

"According to English law, as you are aware, a Bill of Exchange may be accepted conditionally, if the holder chooses to take such an acceptance.[1] In the Indian trade, I believe, it is not at all uncommon for bills to be in terms accepted payable against the delivery of the bills of lading; but I think England and the United States are the only countries where a conditional acceptance is recognised. I may mention that in Massachusetts, and, I think, in one or two other American states, verbal acceptances are still recognised as valid. This was formerly the law in England, but this defect has been remedied by statute. It was probably through allowing verbal acceptances that conditional acceptances crept into English law. Art. 124 of the French Code de Commerce, and Art. 22 of the German General Exchange, expressly prohibit conditional acceptances, treating a bill so accepted as dishonoured; but they allow the drawee to accept for part of the amount of the bill. Most of the Continental Codes contain similar provisions. The expediency of allowing a conditional acceptance is hardly a question on which a lawyer can form an opinion; but, looking at the general character of a negotiable instrument, the Continental rule seems the soundest.

Forged indorsements.

"There is one more point to which I wish to direct your attention. By English law, if the acceptor of a bill pays a person who holds it under a forged indorsement, he is

[1] Chalmers on Bills, Arts. 39, 40.

liable to be called on to pay the amount over again to the true owner of the bill. Formerly, too, a banker who paid a cheque which was held under a false indorsement could not charge his customer with the amount so paid, but now, under the Statute 16 and 17 Vict., c. 59, s. 19, a banker is not bound to verify the indorsements on cheques drawn on him by his customers. If in good faith he pays a cheque on him held under a forged indorsement, he can debit his customer with the amount. The loss falls either on the drawer or the payee, according to circumstances.[1] The English rule as to cheques is in France applied to bills also. If the drawer or acceptor of a bill which is held under a forged indorsement pays it in regular course to the person who appears to be the holder, he cannot be called on to pay over again.[2] It is worthy of consideration whether our present rule as to cheques ought not to be extended to all Bills of Exchange.

German General Exchange Law.

"There are other minor divergencies between our law and that of other nations which I might point out if time permitted, but it does not. I wish, however, before I sit down to call your attention to a peculiar feature of the German General Exchange Law of 1849. It is an international, and not merely a national, Code. All the German States, including Austria, have adopted it; and the terms of its adoption are these. Each State is at liberty to supplement the general law by additional laws of its own, but such subsidiary laws are not in any way to contradict or override the general law. The draft of the German General Exchange Law was drawn up by a commission composed of delegates from the different German States which sat at Leipzig, from 1846 to 1848.

[1] Chalmers on Bills, Art. 263.
[2] Nouguier, Des Lettres de Change, 4 ed., § 339.

The idea of it originated with the Zollverein. The commission, being an international one, had, of course, no legislative powers. When, then, the draft had been agreed upon, it became necessary for each State which assented to it to enact it for its own territory. This was done by means of what were called Introductory Laws. The German Exchange Law is the most fully worked out and the most carefully drafted of the Foreign Codes. Among other good points, it deals with the conflict of laws, and contains some clear and sensible rules for testing the validity of bills drawn or negotiated in other countries which do not conform with the provisions of German law. But the main reason why I have referred to it is this:—There is a body, which you may have heard of, called the Association for the Reform and Codification of the Law of Nations. It includes among its members a good many distinguished foreign lawyers, economists, and bankers. Among its recommendations is a proposal to extend the principle of the German Exchange Law to all Europe, and thus to assimilate the laws of the various European nations respecting Bills of Exchange. I do not wish, at present, to express any opinion as to whether this proposal is as regards England either practicable or advisable. I think it requires a good deal more responsible consideration than it has yet received from English men of business. The unsettled state of English law, the cumbrous form in which it is expressed, its wide divergencies in some important points from the Foreign Codes, and the difficulty of getting any important measure through Parliament, would constitute very serious obstacles to the execution of this project in England. All I wish to do is to call your attention to the fact, that an International Code is not an impossibility, since there is in Germany an

International Code actually in operation and working well.

"It occurs to me that the scheme might be made more easy of execution if its proposed operation were confined to what are called in law 'foreign bills;' that is to say, bills either drawn abroad or drawn in the United Kingdom, but payable abroad. This would leave untouched the law relating to 'inland bills,' that is to say bills which are both drawn and payable in the United Kingdom. You are doubtless aware that according to English law foreign bills are, in several respects, governed by rules different to those which regulate inland bills; and that, for many purposes, our Courts, when dealing with foreign bills, give effect to the law of the place where the bill was issued or payable. This being so, the advantages of uniformity are obvious."

M. D. CHALMERS.

11, New Court, Lincoln's Inn,
February, 1882.

THE

NEGOTIABLE INSTRUMENTS ACT, 1881.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange, and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

SECTION 1.

1. This Act may be called "The Negotiable Instruments Act, 1881:" Short title.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882. Local extent. Saving of usages relating to hundis, &c. Commencement.

SECTION 1.

The Indian Paper Currency Act, 1871, referred to is Act III. of 1871. By § 21 it is provided.

Bill or note to bearer on demand illegal.

21. No body corporate or person in British India shall draw, accept, make, or issue any bill of exchange, hundí, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, use, or take up any sum or sums of money on the bills, hundí, or notes, payable to bearer on demand of any such body corporate or of any such person.

Saving as to cheques

Provided that cheques or drafts payable to bearer on demand or otherwise, may be drawn on bankers, shroffs, or agents, by their customers or constituents, in respect of deposits of money in the hands of such bankers, shroffs, or agents, and held by them at the credit and disposal of the persons drawing such cheques or drafts.

§ 22 provides that the fine payable for contravening this provision shall be equal to the amount of the bill, note, or engagement which causes the offence.

The object of this enactment is to secure for the Government of India a monopoly for the issue and circulation of currency notes. The regulation of the currency of a country is a matter which all Governments take into their own hands, though the manner in which they exercise this function varies much. Compare the analogous provisions of the English Bank Charter Act, 7 and 8 Vict. c. 32, §§ 11, 12, 17 and 18 Vict. c. 33, § 11, and see *Chalmers on Bills*, Arts. 69, 283, 284, as to the scope and extent of the monopoly enjoyed by the Bank of England. As to the issue by the Government of India of promissory notes payable to bearer on demand for sums not less than 5 rupees, see the earlier provisions of the Indian Paper Currency Act, 1871. By §§ 19 and 21 of the Negotiable Instruments Act, a bill or note in which no time for payment is expressed, or which is expressed to be payable "at sight" or "on presentment," is deemed to be payable on demand. Except in the cases specified in the proviso to § 21 of the Currency Act, it would seem that a demand bill, drawn payable to drawer's order, and then indorsed in blank, would come within the mischief of the section; for it is in legal effect a bill payable to bearer on demand. Compare the English statute 17 and 18 Vict. c. 83, § 11, which seems to contemplate this case.

SECTION 1.

Hundis.

This section expressly saves and exempts from the operation of the Act "any local usage relating to any instrument in an oriental language," unless the instrument indicates a contrary intention. The policy of this saving is explained by the Select Committee to whom the bill was referred. They say (see *Gazette of India*, 1st March, 1879):—

"We have carefully considered the arguments urged on the one side by the learned Chief Justice of Bengal and the Bank of Bengal for the immediate application of the measure in its entirety to hundis, and on the other side by the Government of the Panjáb for the total exclusion of hundis from any part of the measure. We have come to the conclusion that the Bill should in this respect be left substantially as it stands. Admitting with the Chief Justice that one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on each subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom as to hundis, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among Native bankers and merchants in certain parts of the country. But we believe that the effect of the Bill, if passed with a saving of the local usages in question, will be, not as the Chief Justice fears, to stereotype and perpetuate these usages, but to induce the Native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to Native bankers and merchants. How long this change will take, it is of course impossible to prophesy. But the Bank of Bengal has supplied evidence that the Native usages as to negotiable paper have of recent years been greatly changing, and that the tendency is to assimilate them more and more to the European custom."

By virtue of this saving the law relating to hundis becomes a question of fact in each particular case. As to proof of usage see §§ 13 and 49 of the Indian Evidence Act, 1872, and "Field's Law of Evidence," ed. 3, pp. 98, 334. As to the

Sections 2, 3.

effect to be given to a new usage in mercantile matters, see per Cockburn, C. J., in *Goodwin* v. *Robarts* (1875), 10 L. R. Ex. at p. 352.

Hundis.

Where a negotiable instrument in an oriental language is drawn or indorsed in one place and payable in another, and the usages of the two places differ, it is not clear which is the "local usage" that is to govern. Perhaps the rules in chap. xvi. of the Act, as to the conflict of laws may be looked at by way of analogy.

The following Indian decisions may be consulted as indicating the nature of Native usage in regard to hundis, namely, as to notice of dishonour, which must be a reasonable notice, though it need not comply with the strict requisites of English law; *Radha Gobind Shaha* v. *Chunder Nath Doss*, 6 W. R. 301, *Megroj Jagganathu* v. *Gokaldas Mathurdas*, 7 Bom. Rep. O. C. J. 137; *Gopal Dass* v. *Seeta Ram*, 3 Agra Rep. 268; see, however, *Gobind Ram* v. *Mathoora Saheega*, 3 Ind. L. R. 339. As to negotiability by indorsement; see *Thakur Dass* v. *Futteh Mull*, 7 Beng. L. R. 275, and the case cited in the note at p. 289. By § 2 of the Stamp Act, 1879, "Bill of Exchange" for the purposes of that Act includes a hundi; see the provisions of that Act in so far as they relate specially to bills, set out in the Appendix. By § 9 of that Act power is given to the Governor-General in Council to regulate the size of the paper on which hundis are to be written.

Repeal of enactments.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

Interpretation clause. "Banker."

3. In this Act—

"Banker" includes also persons or a corporation or company acting as bankers; and

"Notary Public."

"Notary Public" includes also any person appointed by the Governor-General in Council to perform the functions of a Notary Public under this Act.

Section 3.

Writing.

The Act contains no definition of the term "writing," though it requires bills and notes to be in writing, but § 3 of the Indian Stamp Act (Act 1 of 1879) provides that "written" and "writing" include every mode by which letters or figures can be expressed upon paper. As a matter of fact, the body of a bill is usually printed or lithographed, and in many cases the signatures only are in the handwriting of the responsible parties.

Signature

The Act contains no definition of the terms "signature" or "signed," though ss. 4, 5, 7, and 15 respectively require a note to be signed by the maker, a bill by the drawer, an acceptance by the acceptor, and an indorsement by the indorser. A signature may perhaps be defined as "the writing of a person's name on a bill or note in order to authenticate and give effect to some contract by him thereon."[1]

Signature obtained by fraud.

It has been held, both in England and the United States, that when a person is induced by fraud to sign his name to a negotiable instrument under the belief that he is signing a wholly different instrument, his signature is null and void, provided that in so signing he acted without negligence.[2] In a recent case the defendant, an old man with enfeebled sight, was induced to sign his name on the back of a bill of exchange, by being told that it was a railway guarantee to which his signature was wanted. The perpetrators of the fraud then negotiated the bill away, and it eventually got into the hands of a holder in due course. The bill was dishonoured, and the holder sued the old man as an indorser of the bill. It was held that he was not liable on his indorsement.[3] Byles, J., in giving judgment in that case says:—"The defendant, according to the finding of the jury, never intended to indorse a bill of exchange at all, but intended to sign a contract of an entirely different nature. It was not his design, and, if he were guilty of no negligence, it was not even his fault that the instrument turned out to be a bill of exchange. It was as if he had written his name on a sheet of paper for the purpose of franking a letter, or in a lady's

[1] See *Chalmers on Bills*, Art. 49.
[2] See *Chalmers on Bills*, Art. 52.
[3] *Foster* v. *Mackinnon* (1869), 4 L. R. C. P. 704, see at p. 712.

SECTION 3.

album, or on an order for admission to the Temple Church, or on the fly-leaf of a book, and there had already been without his knowledge a bill of exchange or promissory note payable to order inscribed on the other side of the paper. To make the case clearer, suppose the bill or note on the other side of the paper in each of these cases to be written at a time subsequent to the signature, then the fraudulent misapplication of that genuine signature to a different purpose would have been a counterfeit alteration of a writing with intent to defraud, and would therefore have amounted to a forgery. In that case the signer would not have been bound by his signature for two reasons—first, that he never in fact signed the writing declared on and, secondly, that he never intended to sign any such contract."

Signature sufficiency in form.

As regards the sufficiency of a signature in point of form, it has been held in England that a pencil signature to a bill is sufficient.[1] In the case of an ordinary contract a signature by initials is sufficient, but legal analogies should be applied with caution to mercantile instruments like bills and notes, where it is essential that the instrument as it passes from hand to hand should bear its title on its face. Art. 94 of the German Exchange Law requires a signature by mark to be attested by a notary. The American rule as to signatures to bills appears to be very loose.[2]

Companies.

The mode in which the bills and notes of companies, under the Indian Companies Act, 1866 (Act 10 of 1866), are to be executed is prescribed by §§ 40, 42, and 47 of that Act, which are set out in the Appendix.

Signature by agent.

Although the section requires a note to be signed by the maker, it does not require him to sign by his own hand. See §§ 26, 27, and note thereto.

Irregular indorsements.

As to irregular signatures to indorsements, see note to § *post*, p. 12.

[1] *Geary* v. *Physic*, 5 B. & C. 234.

[2] See further, as to English and American law, *Chalmers on Bills*, Art. 49.

CHAPTER II.

OF NOTES, BILLS, AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. "Promissory note."

ILLUSTRATIONS.

A. signs instruments in the following terms:

(*a*). "I promise to pay B. or order Rs.500."

(*b*). "I acknowledge myself to be indebted to B. in Rs. 1,000, to be paid on demand, for value received."

(*c*). "Mr. B., I. O. U. Rs.1,000."[1]

(*d*). "I promise to pay B. Rs.500 and all other sums which shall be due to him."[2]

(*e*). "I promise to pay B. Rs.500, first deducting thereout any money which he may owe me."[3]

(*f*). "I promise to pay B. Rs.500 seven days after my marriage with C."[4]

(*g*). "I promise to pay B Rs.500 on D.'s death, provided D. leaves me enough to pay that sum."[5]

(*h*). "I promise to pay B. Rs.500 and to deliver to him my black horse on 1st January next."[6]

[1] See *Brooks* v. *Elkins* (1836), 2 M. & W. 74.
[2] See *Gould* v. *Coombes* (1845), 1 C. B. 543.
[3] See *Smith* v. *Nightingale* (1818), 2 Stark. 375.
[4] See *Pearson* v. *Garrett*, 4 Mod. 242.
[5] See *Ex parte Tootel* (1798), 4 Ves. 372.
[6] See *Martin* v. *Chauntry* (1747), 2 Str. 1271.

SECTION 4.

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

Requisites of valid note.

NOTE.—A promissory note may be in any form of words which fulfil the requirements of this section, and from which the intention to make a note appears.[1] As to "writing" and "signature," see note to § 3, *supra*. As to delivery, which is necessary to complete the instrument, see § 46, *post*. As to the stamp which is required, see the terms of the Indian Stamp Act, in the Appendix. By virtue of the Indian Paper Currency Act, 1871 (see note to § 1, *supra*, p. 2), a note made payable to bearer on demand is illegal.

See further the notes to the next section as to the certainty required as to the time of payment, the sum payable, and the person to be paid.

Non-negotiable note.

This section expressly recognises non-negotiable notes. Such instruments therefore are valid as between the immediate parties to them, though not transferable by negotiation. A non-negotiable note may perhaps be capable of assignment, subject to the same conditions and in the same manner as an ordinary chose in action; see also § 13 and note thereto.

Note compared with bill.

For most purposes the same or similar considerations apply both to bills and notes, but there are certain points of difference which it may be well to collect and point out. The maker of a note is sometimes called the drawer, but the primary and absolute liability of the maker of a note must be distinguished from the secondary and contingent liability of the drawer of a bill (see §§ 30 and 32, *post*). In general the maker of a promissory note corresponds with the acceptor of a bill of exchange, and the same rules apply to both (see § 32). A note indorsed by the payee resembles an accepted bill, payable to drawer's order, the payee in that case corresponding with the drawer. The distinctions that exist between maker and acceptor arise from this:—the acceptor is not the creator of a bill, his contract is supplementary, being superimposed on that of the drawer, while the maker of a note originates the instrument. Hence a note cannot be made conditionally, while a bill may be accepted conditionally, and by a qualified or limited acceptance the acceptor may, under the conditions specified, alter the original purport of the bill (§ 86). Again, maker and payee are immediate parties in direct relation with each other, while acceptor and payee, except in the case of a bill payable to drawer's order, are remote parties. The following

[1] *Hooper* v. *Williams*, 2 Exch. at p. 20; *Sibree* v. *Tripp*, 15 M. & W. at p. 29; *Chalmers on Bills*, Art. 278.

proceedings relating to bills of exchange have no application to promissory notes, namely, presentment for acceptance, acceptance, reference in case of need, and acceptance *supra protest*. It is not clear whether foreign notes require to be protested, but foreign bills must, for certain purposes, be protested (see § 104 and compare § 102). As to the different meanings of the expression "after sight" in a bill and in a note, see § 21. SECTION 5.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. "Bill of exchange."

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

Section 5.

See note to last section. As to "writing" and "signature," see notes to § 3, *supra*. As to delivery to complete the instrument, see § 46, *post*. As to when a bill is negotiable, see § 13, *post*.

The definition given in this section reproduces the result of the English and American authorities on the subject.

Statement of value received.

It is usual to insert in a bill a statement that it is for value received, but according to English law the insertion of this statement is optional,[1] and the Indian Act has adopted this view by not enumerating a statement of the consideration as one of the requisites of a bill. Under the French Code, Art. 110, not only the fact of consideration, but the nature of the consideration must be specified in the bill. A false statement of consideration constitutes a "supposition de valeur," and avoids the bill in the hands of parties with notice.

Bill to bearer.

It is to be observed that a bill may be drawn payable to bearer. Most of the Continental codes require a bill originally to be drawn payable to order. See for instance French Code, Art. 110; Italian Code, Art. 196. Having regard to the effect of an indorsement in blank, such a provision in Indian or English law would be nugatory, for the drawer could draw a bill payable to his order and then indorse it in blank, thus writing a bill payable to bearer. Under the Indian Paper Currency Act a bill drawn payable *to bearer on demand* is illegal. See note to § 1, *supra*.

Omission of date.

A bill or note should be dated, and most of the foreign codes require this to be done. See for instance French Code, Art. 110; Italian Code, Art. 196; German Exchange, Art. 4. Indian law does not require this. According to the common law the date of an undated writing can be supplied by verbal evidence. A serious difficulty, however, arises in the case of a bill expressed to be payable after date, if the date be omitted, for then there is an *ambiguitas patens* in the instrument itself. Perhaps in this case the instrument may be regarded as an incomplete or inchoate instrument within the meaning and scope of § 20. It is a pity the point has not been specifically dealt with by the Act.

Similar considerations apply to the case of a bill payable

[1] *Hatch* v. *Trayes*, 11 A. & E. 702.

after sight, when the acceptance is undated, as by an accident it sometimes is. Art. 122 of the French Code provides that if, in the case of a bill payable at a fixed period after sight, the acceptance is undated, the time shall run from the date of the bill.

Place where drawn.

A bill usually and properly specifies the place where it is drawn, but the Act does not require this to be done as a matter of necessity. By Art. 110 of the French Code a bill must specify both the place where it is drawn, and the place where it is payable.

Money.

A bill or note must be expressed to be payable in money, and money only; see illustration (*h*) to § 4. The holder is entitled to be paid in legal tender, but it is not necessary that the sum payable should be expressed in Indian currency. Sometimes when the sum payable is expressed in a foreign currency, say pounds sterling or francs, the rate of exchange is expressed in the bill. If this be not done presumably the English rule would be followed, and the amount payable would be calculated according to the rate of exchange on the day the bill was payable.[1] When the time of payment comes the holder if he chooses may accept satisfaction of his debt in any other form instead of money that he pleases. See the Indian Contract Act (IX. of 1872), § 63.

Conditional instruments.

The second clause of this section explains the rule that a bill or note must be unconditional. An instrument expressed to be payable on a contingency could never circulate freely from hand to hand, for no one would know the nature of the security he had got. Illustrations (*f*) and (*g*) to § 4 are instances of instruments which contravene the rule. A note payable "ten days after the death of James Brown" has been held to be valid, for it is certain that the person specified must die, though it is uncertain when he will die. On the other hand, a bill payable "ten days after the arrival of the ship Swallow at Calcutta" is invalid, for the ship may never arrive there at all, as for instance if she be lost on the way.[2]

Where an instrument is expressed to be payable on a con-

[1] See *Hirschfield* v. *Smith*, 1 L. R. C. P., at p. 353; *Chalmers on Bills*, Art. 13.

[2] *Chalmers on Bills*, Arts. 10, 18; *Colehan* v. *Cocke*, Willes, 399.

SECTION 5.

tingency the happening of the event does not cure the defect, for the instrument must be valid *ab initio*, and carry its validity on its face.[1]

An instrument, which is absolute in form, may be delivered conditionally (see § 46, *post*), but that is a matter which only affects parties who have notice of it.

An instrument which is invalid as a bill or note by reason of its being conditional, may of course be valid as an ordinary contract if it complies with the conditions of the general law relating to contracts.

Sum certain.

The third clause of this section reproduces the English and American law on the subject.[2] A bill is often drawn payable "at the exchange as per indorsement." For instances of instruments which contravene the rule that the sum payable must be a sum certain, see illustrations (*d*), (*e*), and (*g*), to § 4.

It has been held that a bill or note expressed to be payable out of a particular fund is invalid because it is uncertain whether the fund will be in existence when the bill becomes payable, but the indication of a fund out of which the drawee is to reimburse himself, or of an account to be debited with the amount of the bill, is not only valid but very common.[3]

Certainty as to payee.

The fourth clause of this section reproduces the English and American law on the subject.[4] It has been held that a bill payable to "the Secretary for the time being of the X. Friendly Society" is invalid, for it is uncertain who may be the secretary when the bill becomes payable.[5] But a bill payable to "the Treasurer of Portugal" is valid, for it is payable to the person who is the treasurer when the bill is issued, whether he remain treasurer or not.[6]

Irregular indorsement.

When the payee or an indorsee is mis-described, or his name is mis-spelt, a difficulty arises as to how he should indorse. Suppose a bill is drawn payable to the order of

[1] *Colehan* v. *Cooke*, Willes, 393; *Chalmers on Bills*, Arts. 10, 18.
[2] See *Chalmers on Bills*, Arts. 10, 13.
[3] See *Haussoullier* v. *Hartsinck*, 7 T. R. 733; *Griffin* v. *Weatherby*, 3 L. R. Q. B. 753, *Chalmers on Bills*, Art. 10.
[4] *Chalmers on Bills*, Art. 9.
[5] *Cowie* v. *Sterling*, 6 E. & B. 333; *Yates* v. *Nash*, 29 L. J. C. P. 306.
[6] *Soares* v. *Glyn*, 8 Q. B. 24.

"John Smith," the man's real name being "James Smyth." An indorsement by him in the name of John Smith is valid and sufficient.[1] The ordinary, and perhaps better plan, is for the payee to sign both names. SECTION 6.

Again, suppose a bill is drawn payable to the order of "Mrs. F. Smith," her husband being F. Smith, and her name being Jane. The proper way for her to sign is to sign "Jane Smith," adding perhaps the words "Mrs. F. Smith" or "wife of F. Smith" in brackets to establish the identity. Supposing she indorsed the bill "Mrs. F. Smith," the indorsement, though irregular, is probably valid. Any one else who fraudulently indorsed the words "Mrs. F. Smith" on the bill, in order to get the money, could clearly be convicted of forgery.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. "Cheque."

This definition is wide enough to include a demand draft by one bank on another, or by a branch bank on the head office. See, however, § 21 of the Indian Paper Currency Act, 1871, set out *ante*, p. 2. Having regard to this enactment, should not the term cheque be confined to demand drafts drawn by a customer on his banker?

In the case of *Rumkhurn* v. *Luchmeechund* (1851), 9 Moore, P. C., at p. 69, Lord Wensleydale, speaking of cheques, and distinguishing them from bills payable after sight, says: "A banker's cheque is a peculiar sort of instrument in many respects resembling a bill of exchange, but in some entirely different. A cheque does not require acceptance; in ordinary course it never is accepted; it is not intended for circulation; it is given for immediate payment; it is not entitled to days of grace; and though, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet in the ordinary understanding of persons it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in

[1] See *Williamson* v. *Johnson*, 1 B. & C., at p. 149; *Willis* v. *Barret*, 2 Stark. 29; *Chalmers on Bills*, Art. 127.

SECTION 7.

need" simply, but he is sometimes referred to under the French name of "besoin." According to French law the "besoin" or "recommandataire" must reside in the place where the bill is payable.[1] The Indian Act imposes no such restriction, therefore the indorser of a bill payable in Calcutta might give the name of a drawee in case of need in Agra. As to acceptance by the drawee in case of need, and the duty to resort to him, see § 115, 116, *post*.

"Acceptor."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

By § 116 the drawee in case of need may accept without previous protest. As to signature, see *ante*, p. 5. A bill is usually accepted by the drawee writing across the face of it the word "accepted" and then signing his name underneath. Some of the Continental codes require the term "accepted" to be used, but in England and Germany the mere signature of the drawee without any words being added to it is a sufficient acceptance.[2] Under the Indian Act the simple signature of the drawee would doubtless be held sufficient. In Massachusetts and one or two other American states, the old common law still prevails, and verbal acceptances are recognised as valid.

In *Young* v. *Glover*,[3] Lord Campbell expressed an opinion that an acceptance written on the back of a bill was sufficient.

The assent of the drawee may be either absolute or qualified. As to the effect of a qualified acceptance, see § 86.

As to the effect of accepting two parts of a set, see §§ 132, 133.

Under some of the Continental codes, an acceptance once written cannot be cancelled (see for instance German Exchange Law, Art. 21; Netherlands Code, Art. 119), but in India as in

[1] See *Chalmers on Bills*, Art. 7.
[2] See 41 & 42 Vict. c. 13; German Exchange Law, Art. 21.
[3] 3 Jur. N. S. 637.

England,[1] an acceptance may be cancelled until it has been notified to the holder. It then becomes complete and irrevocable. Having regard to the terms of § 46, *post*, which says that the acceptance of a bill is completed by delivery, actual or constructive, it seems that in the case of an acceptance, notification to the holder is to be deemed a constructive delivery of the bill to him. There is this difference between an acceptance and the other contracts on a bill. The drawee has no property in the bill, he is a mere depositee with the right to retain possession for a day (see § 63); therefore as soon as he has in any way attorned to the payee or indorsee, he may be regarded as holding the bill on behalf of the payee or indorsee. Section 8.

"Acceptor for honour."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

As to acceptance for honour, see *post*, § 108—112.

"Payee."

The person named in the instrument to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

It is not clear whether this definition would include an indorsee under a special indorsement (see § 16). Having regard to § 85 as to forged indorsements on cheques, the question is one of importance to bankers.

"Holder."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed,

[1] See *Chalmers on Bills*, Arts. 32, 53.

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its holder is the person so entitled at the time of such loss or destruction.

De facto and *de jure* holders.

This definition does not seem a happy one. In the first place, it confines the term "holder" to the meaning of lawful or *de jure* holder. Whereas according to English law and apparently under this Act also, the *de facto* holder has certain important mercantile rights which widely distinguish him from the mere possessor of ordinary movable property. The *de facto* holder of a negotiable instrument may be defined as "the payee, indorsee, or bearer (as the case may be) of the instrument, who is in possession of it, whether he be entitled to receive the amount due thereon or not." Take this instance: an agent is entrusted with a bill or note payable to bearer, for safe custody only. If in breach of trust he negotiates it away to a person who takes it in good faith and for value, he can give a good title with it though he has none himself; so too if he obtains payment of it, he can give a good discharge to the person who pays him, see §§ 9, 10 & 82. Take another case: Smith by fraud induces Jones to draw a cheque in his favour. If Smith as payee of the cheque indorses it to Brown, who cashes it for him in good faith, Brown acquires a good and complete title to the cheque.

Secondly, it is a strain upon language to describe the original owner of a lost instrument as the holder of it. Suppose a cheque payable to bearer is lost, and the person who finds it negotiates it to some other person who takes it in good faith and for value. The latter becomes the holder in due course of the instrument. There are then two holders of the same cheque in this case, according to the Act. The fact is, that the person who lost the cheque is neither the holder nor the owner.

What is wanted is a definition of the mercantile owner of a negotiable instrument,—that is to say, the person who under certain conditions can give a good title thereto, and a good discharge therefor, though he cannot retain the instrument as against the true owner, or enforce payment of it by suit.

A reference to the use of the term holder throughout the

Act seems to show that the definition given in this section has in several instances not been kept in mind, and that the *de facto* holder is what is really contemplated by the term; see especially §§ 15, 20, 46, 48, 49, and 78. SECTION 9.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

By § 2 of the Indian Contract Act (Act IX. of 1872), consideration is thus defined:— Consideration.

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing some thing, such act or abstinence or promise is called a consideration for the promise."

Under this definition it is not quite clear how far a past or pre-existing debt constitutes a good consideration. For instance, suppose a person who has stolen a bill indorsed in blank or a note payable to bearer, pays it away to one of his creditors who takes it in perfect good faith. Is the creditor a holder for consideration? Perhaps it may be said that the creditor, by consenting to take conditional payment, that is a bill or note, instead of absolute payment, that is money, has in effect given consideration. In England it is now well settled that a past debt constitutes a good consideration for a bill or note which is given in payment of it, and that it is immaterial whether the instrument be payable on demand or at a future time.[1] Past debt.

[1] *Chalmers on Bills*, Art. 82; *Currie* v. *Misa*, 10 L. R. Ex. 162.

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Pledge or lien.

It is further settled in England that the holder of a bill who has a lien on it arising either from agreement (as in the case of a pledge) or by implication of law (as in the case of a banker's lien), is deemed to be a holder for consideration to the extent of the sum for which he has a lien.[1]

By § 171 of the Indian Contract Act (Act. IX of 1872):

"Bankers, factors, attorneys and policy brokers may in the absence of a contract to the contrary retain as a security for a general balance of account any goods bailed to them, but no other persons have a right to retain as a security for such balance goods bailed to them unless there is an express contract to that effect."

According to English law the wide terms of this section would be subject to two limitations: (1) If the banker had notice that the bills bailed, that is delivered, to him were not the property of his customer, his lien would be excluded. (2) If the bills were delivered to the banker for safe custody only, and did not come into his hands in the ordinary course of banking business, his lien would be excluded.

Fraud, coercion, &c.

As to fraud, coercion, undue influence and misrepresentation, see §§ 13-18 of the Indian Contract Act.

The English equivalent for "holder in due course" is the term "*bonâ fide* holder for value without notice." The French equivalent, "tiers-porteur de bonne foi" (third party holder in good faith) is expressive.

Sufficient cause to believe.

An important question arises as to what construction the Indian Courts will put upon the words "sufficient cause to believe" in this section. In England and in most of the American States it is now well settled that the only question is whether a negotiable instrument was taken honestly or not, and that it is immaterial that it was taken negligently, if in fact there was no bad faith.[2] Formerly under Lord Tenterden's rulings due care and caution were made the test of *bona fides*.[3]

Having regard to the terms of § 10 as to payment in due course, it seems rather the intention of the Act to revert to the

[1] *Chalmers on Bills*, Art 84; *Collins* v. *Martin*, 1 B. & P. 648; *Attenborough* v. *Clarke*, 27 L. J. Ex. 138.

[2] *Chalmers on Bills*, Art. 86.

[3] See *Gill* v. *Cubitt*, 5 D. & R. 324.

older English rule. According to the modern English doctrine, to deprive a holder for consideration of his privileges there must in the language of the civilians be "dolus" and not merely "negligentia." Mr. Justice Byles, in a judgment where he is distinguishing deeds from negotiable instruments, says referring to the latter, "Honest acquisition confers title. To this despotic but necessary principle the rules of the common law are made to bend. . . . Negligence in the maker of such an instrument makes no difference in his liability to an honest holder for value. The instrument may be lost by the maker without his negligence or stolen from him, still he must pay; the negligence of the holder, on the other hand, makes no difference in his title. However gross the holder's negligence, if it stop short of fraud he has a title."[1]

The whole subject was fully discussed in a recent case in the Court of Appeal, when the question was whether the giving of a certain bill was a fraud by the drawer and acceptor on their creditors. Baggallay, L. J., in giving judgment, says, "I fully recognise the importance of maintaining the well-established principle that negligence or carelessness on the part of the holder of a bill is not of itself sufficient to deprive him of his remedies for procuring its payment. But negligence or carelessness, when considered in connection with the surrounding circumstances, may be evidence of *mala fides*; and the question in this case is whether the surrounding circumstances accompanying the negligence or carelessness of the holder, were such as to affect him with notice of the fraudulent character of the transaction out of which these bills originated."[2] Every case must be determined on its own merits. Good faith or bad faith is a question of *fact* depending on the circumstances of the individual case.[3] It is for the tribunal, whether Court or jury, that has to decide questions of fact, to determine whether a particular holder took a given bill *bona fide* or not. To this issue they must apply their common sense. As Lord Justice Brett observes in

[1] *Swan* v. *North British Australasian Co.* (1863), 2 H. & C. 184.
[2] *Re Gomersall*, Ex. p. *Gordon* (1875), L. R. Ch. C. A., at p. 146.
[3] *Peacock* v. *Rhodes* (1781), 2 Dougl. 633, per Lord Mansfield.

SECTION 9.

the same case: "If a jury has to consider facts they are entitled and bound to make use of their general knowledge of business, in order to appreciate the evidence which is before them; and, if a Court has to consider evidence, I think the Judges are bound to use their own general knowledge of business, and of the ordinary moving motives of mankind, just as a jury would."

Lord Blackburn, in a recent judgment in the House of Lords, thus sums up the law on the subject:—"I consider it to be fully established that if value be given for a bill of exchange, it is not enough to show that there was carelessness, negligence, or foolishness in not suspecting that the bill was wrong, when there were circumstances that might have led a man to suspect that. All these are matters which tend to show that there was dishonesty in not doing it, but they do not in themselves make a defence to an action upon a bill of exchange. I take it that in order to make such a defence, whether in the case of a party who is solvent and *sui juris* or when the bill is sought to be proved against the estate of a bankrupt, it is necessary to show that the person who gave value for the bill, *whether the value be great or small*, was affected with notice that there was something wrong about it when he took it. I do not think it is necessary that he should have notice of what the particular wrong was. If a man, knowing that a bill was in the hands of a person who had no right to it, should happen to think that perhaps the man had stolen it, when if he had known the real truth, he would have found, not that the man had stolen it, but that he had obtained it by false pretences, I think that would not make any difference if he knew there was something wrong about it, and took it. If he take it in that way he takes it at his peril. But then I think, such evidence of carelessness or blindness as I have referred to, may, with other evidence, be good evidence upon the question, whether he did know there was something wrong in it. If he was (if I may use the phrase) honestly blundering and careless, and so took a bill of exchange or a bank note when he ought not to have taken it, still he is entitled to recover. But if the facts and circumstances are such that the jury, or whoever has to try the question, came to the

conclusion that he was not honestly blundering, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind, I suspect there is something wrong, and if I ask questions and make further inquiry it will be no longer my suspecting it, but my knowing it, and then I shall not be able to recover—I think that is dishonesty. I think that that is established, not only by good sense and reason, but by the authority of the cases themselves."[1] SECTION 9.

Inadequacy of consideration.

The fact that the holder gave full value for the bill is not conclusive of his good faith, but naturally raises a strong presumption of it.[2] On the other hand, the inadequacy of the consideration given is evidence of bad faith, but is not conclusive of it. On this point Lord Blackburn says: "Since the repeal of the Usury Laws, we cannot inquire into the question as to how much was given for a bill, and if S. was in such a position that he could have proved against the estate, it would have been no objection at all that he conveyed these bills to another for a nominal amount, that he sold bills nominally amounting to £1,700 for £200. Although I think that could not have been inquired into, yet the amount given in comparison with the apparent value is an important piece of evidence, guiding us to a conclusion whether or not it was a *bona fide* transaction. I am sure of this, that in criminal cases the general evidence that is given to show that the receiver of goods which were stolen, knew them to be stolen, is that he has given a great under-value for them. That is not by any means conclusive, because it may very well be that he has given the under-value under circumstances which do not suffice to prove that he had a criminal intention which would be required to make him guilty. In like manner, I think that if it be shown that a considerable under-value was given for bills, although that alone would probably not be sufficient, it is an element, and an important element, in considering whether the man who gave that under-value was *bona fide* doing it in honest

[1] *Jones* v. *Gordon* (1877), 2 L. R App. Cas., at p. 628.
[2] See per Creswell, J., in *Raphael* v. *Bank of England* 1855. 17 C. B. 171.

SECTION 9.

stupidity or because he had a suspicion that he would deprive himself of a good bargain if he made too much inquiry, and so had it brought home to him that there was a fraud."[1]

Patent irregularity.

The general right of an honest holder for value to claim to be a holder in due course is subject in English law to two limitations: first, the bill must not be over-due when he takes it, and secondly, the bill must not have any irregularity patent on the face of it.[2] The first limitation is expressed in the section, the second would probably be implied from the words "sufficient cause to believe." A recent American judgment puts the point very clearly. Some negotiable county bonds, which had been indorsed in blank by the payee, were stolen. The thief erased the payee's indorsement, personated the payee himself, and sold the bonds to a person who purchased them in perfect good faith. It was held that the purchaser acquired no title, and that the erasure, at any rate, ought to have put him on his guard. The Court says:[3] "He did not rely upon anything that appeared upon the bonds. He relied on the representations of the thief, and was deceived by them. Against such deception the laws applicable to negotiable paper were not intended to guard. It is their purpose to facilitate the circulation of paper, fair and regular upon its face, and to protect the *bonâ fide* purchasers of such paper. . . . . Suppose a thief should erase the name of the maker of a note, and then forge the same signature, could he give a *bonâ fide* purchaser for value title to the paper? I am clearly of opinion he could not. The paper is not fair upon its face. There is a forgery, and although the purchaser may be ignorant of it, the law merchant does not protect him against such ignorance. He must know at his peril that the signatures are genuine. We are asked, suppose the name of the payee, indorsed upon negotiable paper, fades out so as to be invisible, does it affect the negotiable character of the paper? Most certainly it does. The title and rights of the owner remain the same as before, but a thief could give no title to such a paper to any one, because he cannot be the

[1] *Jones* v. *Gordon*, 2 L. R. App. Cas., at 631, 632.
[2] See *Chalmers on Bills*, Arts. 134 and 138.
[3] *Colson* v. *Arnot* (1874), 54 New York R. 253, at p. 260.

apparent owner thereof, and there is nothing on the face of the paper to induce the belief that he is the owner." SECTIONS 10-12.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. "Payment in due course."

As to when payment in due course operates as a discharge, see §§ 78 and 82 (c) and note thereto.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument. Inland instrument.

This section and the next correspond with the English definitions of inland and foreign bills.[1] As to the necessity for protesting foreign bills and notes, see *post*, §§ 104, 134. As to re-exchange, see § 117.

According to the above definition the following would be inland bills:

1. A bill drawn in Calcutta on Bombay, but indorsed in Egypt.

2. A bill drawn in Calcutta on a merchant in Bombay, accepted, payable in London.

3. A bill drawn in Calcutta upon a merchant in London, but payable in Bombay.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument.

See note to last section.

[1] *Chalmers on Bills*, Art. 24; 19 and 20 Vict. c. 97, § 7.

Sections 13, 14.

"Negotiable instrument."

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order specified of a person, or to the bearer thereof, or to a specified person or the bearer thereof.

Pay C.

This section embodies the English law on the subject. According to Scotch law a bill is negotiable unless it contains express terms prohibiting negotiation, as for instance, "Pay C. only."[1] The result is this: if an Indian bill be drawn in the form "Pay to C.," without adding the words, "or order," "or bearer," or their equivalent, it is not negotiable, and C. cannot transfer it by indorsement. If on the other hand a bill, originally negotiable, be indorsed simply "Pay C.," its negotiability is not thereby restricted, and C. can indorse it away. See *post*, § 50, illustration (*e*), and § 51.

Not negotiable.

See a peculiar and technical meaning given to the term "not negotiable," in the case of a crossed cheque, § 130, *post*, and note thereto.

Negotiable bonds or scrip.

The Act enumerates three kinds of negotiable instruments only, namely, bills of exchange, promissory notes, and cheques. In England the question has arisen how far usage may endow other instruments than these, the main and typical negotiable instruments, with the incidents of negotiability. It has been held that bonds to bearer and scrip to bearer may be negotiable for the purpose of passing with a good title to holders in due course, although the seller may have had a defective title or no title.[2] How far these instruments would have the other incidents of ordinary negotiable instruments has not been discussed or decided.

Negotiation.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to

[1] *Chalmers on Bills*, Arts. 8, 107.

[2] See *Gorgier* v. *Mieville*, 3 B. & C. 45, Foreign Bonds; *Goodwin* v. *Robarts*, 10 L. R. Ex. 337, Foreign Scrip; *Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194, English Scrip.

constitute that person the holder thereof, the instrument is said to be negotiated. SECTION 14.

The transfer must be by indorsement if the bill is in legal effect payable to order, and by delivery if the bill is in legal effect payable to bearer. See §§ 46–48, *post*.

Transfer of bill to order without indorsement.

A question has arisen in England as to the effect of transferring for value a bill payable to order without indorsing it. It is held that the transfer operates as an equitable assignment of the instrument. The difference between an equitable assignment and a transfer by negotiation is well pointed out by Willes, J. The learned judge says:—

"The general rule of law is undoubted that no one can transfer a better title than he himself possesses. *Nemo dat quod non habet*. To this there are some exceptions, one of which arises out of the rule of the law merchant as to negotiable instruments. These being part of the currency, are subject to the same rule as money, and if such an instrument be transferred in good faith for value before it is over-due, it becomes available in the hands of the holder, notwithstanding fraud which would have rendered it unavailable in the hands of a previous holder. This rule, however, is only intended to favour transfers in the ordinary and usual manner, whereby a title is acquired according to the law merchant, and not to a transfer which is valid in equity according to the doctrine respecting the assignment of choses in action; and it is therefore clear that in order to acquire the benefit of this rule the holder must, if it be payable to order, obtain an indorsement, and that he is affected by notice of a fraud received before he does so. Until he does so he is merely in the position of the assignee of an ordinary chose in action, and has no better title than his assignor."[1]

When a bill payable to order is transferred without indorsement, the transferee for consideration is entitled as of right to obtain the indorsement of the transferor, or if the latter be dead, then that of his personal representative.[2] As to the mode of enforcing a decree for the indorsement of a negoti-

[1] *Whistler* v. *Forster*, 14 C. B. N. S., at pp. 257, 258.
[2] *Chalmers on Bills*, Art. 104.

Sections 15, 16.

able instrument, see §§ 261, 262, of the Civil Procedure Code, set out in the Appendix.

"Indorsement."

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorser.

Avals.

This section represents the English law as far as it goes; but it is narrower than the English rule, according to which if a person who is not a party to bill or note at all, backs it with his signature, he thereby incurs the liabilities of an indorser.[1] Such quasi-indorsements are known under the Continental codes as "avals," and the rights and liabilities of the party giving the "aval" are minutely regulated. See French Code, Arts. 142, 143; Netherlands Code, Arts. 130-132. In some of the American States the liability of such a quasi-indorser is held to be that of an ordinary guarantor, and not the mercantile engagement of an indorser proper.[2]

Allonge.

As to indorsing inchoate instruments, see *post*, § 20. Where there is not room on a bill for all the indorsements, a slip of paper called an "allonge" is added thereto. It forms part of the bill, and subsequent indorsements may be written thereon.[3] Some of the foreign codes contain minute provisions to prevent frauds, for instance, that the first indorsement on the allonge must begin on the bill and end on the allonge.[4]

Indorsement "in blank" and "in full."

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds

[1] See *Ex parte Yates*, 2 De G. & J. 191; *Steele* v. *McKinlay*, 5 L. R. App. Cas. 754.
[2] See *Chalmers on Bills*, Art. 217.
[3] See *Monmohunee* v. *Secretary of State*, 13 Beng. L. R. 359.
[4] See *Nouguier*, § 668; *Chalmers on Bills*, Art. 114.

a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

SECTIONS 17, 18.

"Indorsee."

An indorsement "in blank" is often spoken of as a "general" indorsement, and an indorsement "in full" as a "special" indorsement. Under the Indian Act as in England a bill indorsed in blank becomes payable to bearer (see § 54).

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Ambiguous instruments.

This section reproduces the English law on the point[1]

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Where amount is stated differently in figures and words.

This section reproduces the English law on the subject.[2] German Exchange Law, Art. 5, is to the same effect, but further provides that if the amount payable is expressed both times in words, or both times in figures, and there is a discrepancy in the sums, the smaller sum is the amount payable.

It has been held in England that the figures may supply an omission in the words. Thus where a bill ran, "Pay T. C. or order one hundred," and in the margin was written, "£100," it was held that this was a valid bill for one hundred pounds.[3]

If the sum were left blank both as regards words and figures

[1] See *Chalmers on Bills*, Art. 58; *Edis* v. *Bury*, 6 B. & C. 433.
[2] *Chalmers on Bills*, Art 12.
[3] *R.* v. *Elliott*, 1 Leach C. C. 175.

Sections 19, 20.

the bill or note in question would be a merely inchoate instrument. As to such instruments, see § 20, *post*.

Where the intention is quite clear the omission of a word may not be material; thus where a bill ran, "Pay to my order twenty-five, ten shillings," it was held that this was a good bill for £25 10s.[1]

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

This section reproduces the English law.[2]

By § 6, a cheque has already been defined as a bill of exchange which is not expressed to be payable otherwise than on demand.

By § 21, the terms "at sight" or "on presentment" in a bill or note mean on demand.

By § 35, every indorser after dishonour is liable as upon an instrument payable on demand.

By § 32, the acceptor of a bill at or after maturity is bound to pay the amount thereof to the holder on demand.

By § 74, an instrument payable on demand, other than a cheque, must be presented for payment within a reasonable time after it is received by the holder. See further note to § 59.

As to the provisions of the Limitation Act in respect to instruments on demand, see *post*, p. 129, Nos. 70, 73.

As to the illegality of bills or notes (cheques excepted) payable to bearer on demand, see *ante*, p. 2.

As to the stamp on instruments payable on demand, see *post*, pp. 143, 144.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or

[1] *Phipps v. Tanner*, 5 C. & P. 488.
[2] *Chalmers on Bills*, Art. 18.

having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. SECTION 20.

This section to a great extent, if not entirely, reproduces the English law on the subject.[1]

Byles, J., thus states the English law in the case of *Foster* v. *Mackinnon*, 4 L. R. C. P., at p. 712. He says: "Negotiable instruments are not only assignable, but they form part of the currency of the country. If, therefore, a man write his name across the back of a blank bill-stamp, and part with it, and the paper is afterwards improperly filled up, he is liable as indorser. If he write his name across the face of the bill, he is liable as acceptor, when the instrument has once passed into the hands of an innocent indorsee for value before maturity, and liable to the extent of any sum which the stamp will cover. In these cases the party signing knows what he is doing: the indorser intended to indorse, and the acceptor intended to accept, a bill of exchange to be thereafter filled up, leaving the amount, the date, the maturity, and the other parties to the bill undetermined."

The section requires, as a condition of liability, that the signer should deliver the instrument to another.

A recent English case illustrates the meaning of this pro-

[1] *Chalmers on Bill's*, Art. 23.

SECTION 20.

vision. The facts were that J. B. put a blank acceptance in his desk. His clerk stole it, filled it up as a complete bill for £200, and got it discounted. The person into whose hands it eventually came was a holder in due course, and when it was dishonoured, he sued J. B. as acceptor. It was held that he could not recover.[1] Lord Justice Brett, in giving judgment in that case, says (see p. 531): "Where a man has signed a blank acceptance, and has issued it, and has authorized the holder to fill it up, he is liable on the bill whatever the amount may be, though he has given secret instructions to the holder as to the amount for which he shall fill it up: he has enabled his agent to deceive an innocent party, and he is liable. No case has been decided where the acceptor has been held liable if the instrument has not been delivered by the acceptor to another."

The case of *Schultz* v. *Astley*[2] illustrates the distinction. There B. gave a blank acceptance to a money-lender to get it discounted for him. The money-lender filled it up as a bill payable to drawer's order, and inserted the name of a fictitious person as drawer and indorser. He then fraudulently used the bill for his own purposes, handing no money over to B. The bill eventually got into the hands of a holder in due course, and it was held that B. was liable as acceptor.

Holder in due urse.

As to the term "holder in due course," see § 9. In England, and perhaps the same would be held in India, it is settled that if there is any fraud relating to an inchoate instrument, a holder who takes the instrument with notice that it was issued in an incomplete state, cannot claim the rights of a holder in due course. In *Hatch* v. *Searles*,[3] Vice-Chancellor Stuart says: "As to a *bona fide* holder the question as to the effect of the acceptance or indorsement having been written on a blank piece of paper can be of no importance, unless he can be fastened with notice of that imperfection. If the holder has notice of the imperfection he can be in no better situation than the person who took it in blank, as to any right against the

[1] *Baxendale* v. *Bennet* (1878), 3 Q. B. D. 525, C. A.

[2] 2 Bing. N. C. 544, and see *London and South-Western Bank* v. *Wentworth* (1880), 5 Ex. D. 96.

[3] 2 Sm. & Gif. at p. 153. See further *Hogarth* v. *Latham*, 3 Q. B. D. 643, C. A., at p. 647.

acceptor or indorser who gave it in blank. But if he be a *bonâ fide* holder without notice, he must have taken the negotiable instrument in a perfect shape and in terms a complete contract." To put the principle in other words, a blank acceptance is not a bill but an authority to create one, and any person who knows that he is taking an instrument executed under an authority is bound to know at his peril whether that authority is being properly exercised. Sections 21, 22.

As an incomplete negotiable instrument is an authority to create a complete one, it follows that the relations between the person who gives and the person to whom it is given are governed by the general principles of the law of agency. As to these, see Indian Contract Act, §§ 182–238. Authority.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance. "At sight." "On presentment." "After sight."

This section reproduces the English law on the points included.[1] The expression "after sight" in a bill of exchange means in effect after sight evidenced on the bill.

As regards protest, it must be borne in mind that a protest bears date of the day on which the bill is noted, not of the day on which the protest is formally drawn up, or, as it is called, extended.

This section must be read with § 19, *ante*. p. 30, of which logically its first sentence seems to form part.

22. The maturity of a promissory note or bill of exchange is the date at which it falls due. Maturity.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight,

[1] See 34 & 35 Vict. c. 74, and *Chalmers on Bills*, Arts. 18, 20.

Section 23. Days of grace.

or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

This section reproduces the English law on the points referred to.[1] Having regard to the terms of §§ 6 and 19, this clause is rather awkwardly expressed, but its meaning is fairly clear, namely, that three days of grace are to be added in the case of all bills and notes (including cheques) which in legal effect are not payable on demand.

Bills are sometimes in terms drawn payable "without grace." Under this section it is not clear what effect is to be given to such a stipulation.

Most of the Continental codes have abolished days of grace. See for instance, French Code, Art. 135; German Exchange Law, Art. 33. As regards the countries which retain days of grace, the number of days given varies considerably.

Calculating maturity of bill or note payable so many months after date or sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

[1] *Chalmers on Bills*, Art. 20.

ILLUSTRATIONS. SECTIONS 24, 25.

(*a*). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(*b*). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*c*). A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

NOTE.—This section reproduces the English law on the points referred to.[1] The last sentence might be more shortly expressed by saying that "month" means calendar month. Perhaps, however, it is designed to meet the case of lunáis.

Usance. Continental bills are still occasionally drawn at usances. The length of an usance in any particular case must, it seems, be proved, and will not be judicially noticed.

Conflict of laws. When a bill is drawn in one country and payable in another, the computation of time is determined by the law of the place of payment.[2]

Calculating maturity of bill or note payable so many days after date or sight.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

This section reproduces the English law on the point.

When day of maturity is a holiday.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

[1] *Chalmers on Bills*, Art. 20.
[2] *Rouquette* v. *Overman*, 10 L. R. Q. B. 525.

SECTION 25.

EXPLANATION.—The expression "public holiday" includes Sundays: New Year's Day, Christmas Day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

This section introduces an improvement on the English law by putting all non-business days on the same footing. In England, when a bill or note falls due on Sunday, Christmas Day, Good Friday, or a day appointed by proclamation as a public fast or thanksgiving day, it is payable on the preceding business day, while if it falls due on a Bank Holiday it is payable on the succeeding business day.[1]

[1] *Chalmers on Bills*, Art. 20; 34 & 35 Vict. c. 17.

CHAPTER III.

PARTIES TO NOTES, BILLS, AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a promissory note, bill of exchange, or cheque. SECTION 26. Capacity to make, &c., promissory note, &c.

A minor may draw, indorse, deliver, and negotiate such instruments so as to bind all parties except himself. Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse, or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered. Corporation.

By § 11 of the Indian Contract Act (IX. of 1872) "every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

Law in India is personal; therefore the disability of an English married woman, not having separate estate, to bind herself by a bill or note would be recognised by the Indian courts. It is immaterial in England that the woman represents herself as single.[1]

[1] *Cannam* v. *Farmer*, 3 Exch. 698. See further *Chalmers on Bills*, Arts. 65, 66, 98.

SECTION 27.

This section does not seem to recognise the distinction which is drawn in English law between a minor's power to render himself liable on an indorsement, and his power by indorsing a bill to divest himself of the property thereon.[1]

A corporation, according to English law, can only make itself liable by drawing, indorsing, or accepting a bill or note: (1) when it is a trading corporation; (2) when the terms of its act of incorporation are such as expressly or by reasonable construction confer on it this power.[2] Thus it has been held that an ordinary railway company is not liable on its acceptance.[3] But a corporation which cannot make itself liable as the indorser of a bill may, nevertheless, by its indorsement, transfer the property in a bill which it holds.[4]

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

The three clauses of this section reproduce the English law on the subject.[5]

An agent who signs a bill for his principal may either sign the principal's name simply, or he may sign by procuration, or in other such form as to denote that it is not the principal himself, but an agent, who signs the name.

The effect of the section is this: it is immaterial what

[1] See *Chalmers on Bills*, Arts. 63, 64.
[2] *Re Peruvian Railways Co.*, 2 L. R. Ch. Ap. 617; *Chalmers on Bills*, Arts. 67, 68.
[3] *Bateman* v. *Mid-Wales Railway*, L. R. 1 C. P. 499.
[4] *Smith* v. *Johnson*, 3 H. & N. 222.
[5] See *Chalmers on Bills*, Arts. 72, 73.

hand actually signs the principal's name to a bill, if in fact there is authority to put it there. SECTION 27.

Delegated authority.

In *Lord* v. *Hall*, 8 C. B. 627, the facts were that J. S.'s wife managed his business and had authority to indorse bills and notes for him. It appeared that the note sued upon had been indorsed by J. S.'s daughter in his name, under the directions and in the presence of his wife. It was held that this was a valid indorsement to bind J. S.

Maule, J., at p. 630 says: "The question is whether upon the evidence the wife was not acting in the strict exercise of the authority conferred on her by her husband in doing what she did, namely, in requesting a third person to do it in her presence. There was evidence that the wife had the general management of her husband's business. And when he authorized her to draw, accept, and indorse bills in his name, that may fairly be extended to authorizing her to select some person, *pro hac vice*, to write the name of her husband for her. It may be that this may lead to some inconvenience. . . . I find a case of *Ex parte Sutton* (2 Cox B. C. 84), which may be worth considering with reference to this subject. It was there held that an authority given to A. to draw bills in the name of B. may be exercised by the clerks of A. The way in which that case seems to me to apply to the present is this: the Lord Chancellor treats the extent of the authority as a matter of fact to be inferred from the evidence."

Signature per proc.

In the case of a procuration signature, it is held that the person who takes the bill is put on his inquiry as to the existence and extent of the authority which the agent purports to exercise.[1]

In the leadingcase on the point,[2] Bayley, J., says: "This was an action on an acceptance importing to be by procuration, and therefore any person taking the bill would know that he had not the security of the acceptor's signature, but of the party professing to act for him in pursuance of an authority from him. A person taking such a bill ought to exercise due caution, and it would be only reasonable prudence to require the production of that authority." Later decisions have

[1] *Chalmers on Bills*, Arts. 74, 75.
[2] *Attwood* v. *Munnings*, 7 B. & C. 278, at p. 283.

SECTION 28.

followed this case, but the views there expressed are considerably opposed to the mercantile view of the matter.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange, or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

This section reproduces the English law.[1] "Is it not a universal rule," says Lord Ellenborough in *Leadbitter* v. *Farrow*,[2] "that a man who puts his name to a bill of exchange thereby makes himself personally liable, unless he states upon the face of the bill that he subscribes it *for* another, or by procuration of another, which are words of exclusion. Unless he says plainly, 'I am the mere scribe,' he is liable."[3]

Liability of principal.

The rule is construed in England with peculiar strictness in bill transactions, because of the non-liability of an undisclosed principal in such case.[4] In the case of a bill or note the holder must look to the signatures on it and to those only. As Lord Justice James says in a recent case[5]: "Now it is, and always has been the law of this country that nobody is liable upon a bill of exchange, unless his name, or the name of some partnership or body of persons of which he is one, appears either on the face or on the back of the bill."

It seems uncertain whether the English rule as to the non-liability of an undisclosed principal on a bill applies in India. Neither § 233 of the Indian Contract Act nor this Act excepts parties to negotiable instruments from the general rule that where an agent is personally liable, a person dealing with him may hold either him or his principal or both of them liable.

[1] *Chalmers on Bills*, Art. 76.
[2] 5 M. & S. 345, at p. 349.
[3] For illustrations see *Rew* v. *Pettit*, 1 A. & E. 196; *Gray* v. *Reper*, 1 L. R. C. P. 694; *Dutton* v. *Marsh*, 6 L. R. Q. B. 361.
[4] Ibid., at p. 350, per Holroyd, J.
[5] *Re Adamsonia Co.*, 43 L. J. Ch., at p. 734.

In the case of an agent signing for a limited company, this section must be read with § 47 of the Indian Companies Act, *post*, p. 127, which prescribes how the bills and notes of companies under that Act are to be executed.

Liability of legal representative signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

This section represents the English law on the subject.[1] In the case of an indorsement, an executor, like any other indorser, may avail himself of the provisions of § 52, *post*. The following forms of indorsement by an executor are suggested :—

1. "J. B., executor of the said C. B., without recourse."

2. "J. B., executor of the said C. B., without recourse against me personally."

3. "J. B., executor of the said C. B., with recourse against the estate of the said C. B. only."

See § 57, as to the invalidity of the delivery by an executor or administrator of a bill indorsed by the deceased.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

This section represents the English law on the subject.[2] As to the measure of compensation, see *post*, § 117. As to dishonour, and the rules as to notice of dishonour, see *post*, §§ 91–97. In the case of foreign bills protest may be necessary in order to charge the drawer. See *post*, § 104. See further note to § 32.

[1] *Chalmers on Bills*, Art. 76.
[2] Ibid., Art. 215.

Sections 31, 32.

Liability of drawee of cheque.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

This section reproduces the English law on the subject.[1] For a definition of cheque, see § 6. As to the general relations between the drawer and drawee of a cheque as distinguished from those of the drawer and drawee of an ordinary bill, see note to § 7, *ante*, p. 15. As to payment of a cheque where the indorsement of the payee is forged, see § 85.

The section only deals with the relations of drawer and drawee. There is no privity between the holder of a cheque as such, and the banker on whom it is drawn.[2]

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

The expression "a contract to the contrary," in this section presumably refers to some collateral agreement controlling the ordinary operation of the bill or note. It is not clear

[1] *Chalmers on Bills*, Art. 260.
[2] *Hopkinson* v. *Forster*, 19 L. R. Eq. 74.

why this term is inserted in this section and § 35, while it is omitted in §§ 30, 31.

This section reproduces the English law on the subject.[1] It is to be observed that except in the case of an instrument payable at a particular place, no presentment or demand is necessary to charge the maker of a note expressed to be payable "on demand," see *post*, § 64. As to qualified acceptances, see *post*, § 86. As to the estoppels which bind an acceptor or maker, see §§ 41, 42, 88, 120, 121.

As to the terms acceptor and acceptance, see *ante*, § 7.

Only drawee can be acceptor in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

By § 116 a drawee in case of need may accept without a previous protest; in this case therefore he perhaps becomes an ordinary acceptor. The contract of an acceptor for honour is very different from the contract of an ordinary acceptor; compare § 32 with §§ 111, 112.

When a bill is addressed to no one, and some person writes an acceptance on it, he is probably liable as the maker of a note.[2]

The following English cases illustrate the rule laid down in this section:—

1. A bill is addressed to Brown. Smith writes an acceptance on it. Smith is not liable as the acceptor of that bill.[3]

2. A bill is addressed "to the Directors of the X. Company, Limited." The acceptance is signed by two directors and the manager. The manager is not liable as an acceptor.[4]

3. A bill is addressed to "John Brown, general agent of the X. Company." He accepts it thus: "Accepted on behalf of the Company, John Brown." He is personally liable as acceptor.[5]

[1] *Chalmers on Bills*, Arts. 211, 290.
[2] See § 17, and *Peto* v. *Reynolds*, 11 Exch. 418.
[3] *Davis* v. *Clarke*, 6 Q. B. 16.
[4] *Bult* v. *Morrell*, 12 A. & E. 745.
[5] *Herald* v. *Connah*, 31 L. T. 855; *Mare* v. *Charles*, 5 E. & B. 978.

Sections 84, 85.

4. A bill is addressed to John Brown, who is a partner in the firm of Smith and Co. He accepts it in the name of Smith and Co. John Brown is liable as acceptor of this bill.[1]

5. A bill is addressed to Smith and Co. John Brown, who is a partner in the firm, accepts it in his own name. He is liable as acceptor; for a bill addressed to Smith and Co. is in legal effect addressed to every person who is a partner in that firm.[2]

6. A bill is addressed to Smith and Co. The proper style of the firm is Smith, Jones, and Co, and the bill is accepted in that name. The firm is liable on the acceptance.[3]

The address to the drawee and the acceptance should be construed together. For further illustrations see *Chalmers on Bills*, Arts. 5, 37.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

By § 86, the acceptance of some but not of all of several drawees who are not partners is a qualified acceptance. See also note to last section.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

[1] *Nicholls* v. *Diamond*, 9 Exch. 154.
[2] *Owen* v. *Van Uster*, 10 C. B. 318.
[3] *Lloyd* v. *Ashby*, 2 B. & Ad. 23.

Every indorser after dishonour is liable as upon an instrument payable on demand.

SECTIONS 36–38.

The first clause of this section reproduces the English law on the subject.[1] The second clause reproduces the law as settled in America. In England the point has not been judicially decided.[2]

See indorser defined by § 15. As to indorsements excluding liability, see § 52. As to the measure of damages, see § 117. As to the discharge of the indorser's liability when the holder impairs his remedy against prior parties, see § 40. As to presentment of instruments payable on demand, see § 74.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

If in this section "prior party" means prior in point of time, it should run: "The acceptor and every prior party," &c. As suing the parties jointly and severally liable on a bill, see § 29 of the Civil Procedure Code, *post*, p. 131. See further §§ 9 and 58 and notes thereto as to the rights of holders in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

Art. 118 of the French Code provides that "le tireur et les endosseurs d'une lettre de change sont *garants solidaires* de l'acceptation et du paiement à l'échéance."

38. As between the parties so liable as sureties,

Prior party a

[1] *Chalmers on Bills*, Art. 218.
[2] Ibid., Art. 201.

Section 39. principal in respect of each subsequent party.

each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

ILLUSTRATION.

A. draws a bill payable to his own order on B., who accepts. A. afterwards indorses the bill to C., C. to D., and D. to E. As between E. and B., B. is the principal debtor, and A., C. and D. are his sureties. As between E. and A., A. is the principal debtor, and C. and D. are his sureties. As between E. and C., C. is the principal debtor and D. is his surety.

Accommodation bills or notes.

NOTE.—This section reproduces the English law on the subject.[1] In the case of an accommodation bill there is "a contract to the contrary." If a bill be accepted for the accommodation of the drawer, the drawer is the principal debtor, and the acceptor is the surety; and if the acceptor has to pay the bill the drawer is bound to indemnify him.[2] As to the results which flow from this relationship of principal and surety between the parties to a bill, see ss. 132-140 of the Indian Contract Act (IX. of 1872). See also note to next section.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 131 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

This section must be read subject to the provisions of the next section. It represents the English law as far as it goes, but there is no apparent reason why its provisions are confined to the case of the acceptor of a bill. They are equally applicable to the maker of a note, or whoever is in fact the principal debtor in a bill transaction. What the result of this *expressio unius* may be, is not very clear.

[1] *Cook* v. *Lister*, 32 L. J. C. P., at p. 127; *Chalmers on Bills*, Art. 245.
[2] *Chalmers on Bills*, Art. 229; *Reynolds* v. *Doyle*, 1 M. & Gr. 753.

Sections 134, 135, of the Indian Contract Act (IX. of 1872) are as follows:— SECTION 40.

§ 134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

§ 135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue the principal debtor, discharges the surety, unless the surety assents to such contract.

The following cases illustrate the operation of the section:—

1. The holder of a bill for Rs. 2,000, takes from the acceptor Rs. 1,000 in full discharge of his claim against him, but expressly reserves his rights against the drawer and indorsers (thereby preserving their rights against the acceptor). The drawer and indorsers are still liable to that holder.[1]

2. The holder of a dishonoured bill enters into a contract to give time to the first indorser. This discharges the subsequent indorsers but not the drawer or acceptor.[2]

3. A bill is accepted for the accommodation of the drawer. After the dishonour of the bill, the holder is informed of the relationship between drawer and acceptor; he then enters into a contract to give time to the drawer. The acceptor is discharged.[3]

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Discharge of indorser's liability.

ILLUSTRATION.

A. is the holder of a bill of exchange made payable to the

[1] *Muir* v. *Crawford*, L. R. R. Sc. Ap. 456.
[2] *Hall* v. *Cole*, 4 A. and E. 577.
[3] *Ewin* v. *Lancaster*, 6 B. & S. 571.

Sections 41, 42.

order of B., which contains the following indorsements in blank:—

First indorsement, "B."
Second indorsement, "Peter Williams."
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill A. puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A. is not entitled to recover anything from John Rozario.

NOTE.— See note to last section.

Acceptor bound, although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

The meaning of this section is not clear. If it refers only to the indorsement of the payee, it represents the English law, which may be stated thus. Where in the case of a bill payable, not to drawer's order, but to the order of a third party, the acceptor knows that the payee is a fictitious person or that the payee's indorsement is forged, he is estopped from setting up the fact. He is not allowed to set up that he has accepted a nullity to which no one can make any title.[1] If the section refers to subsequent indorsements also, it is difficult to understand its operation. A forged indorsement cannot of course affect the title of the person whose indorsement has been forged. The property in the bill still remains in him, and no one but he can give a valid discharge therefor.

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course

[1] *Chalmers on Bills*, Art. 139; *Beeman* v. *Duck*, 11 M. & W. 251; *Gibson* v. *Minet*, 1 H. Bl. 569.

claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer. SECTION 42.

This section reproduces the English law on the subject.[1] There are dicta to the effect that such a bill, *quoad* the acceptor, may be regarded as payable to bearer.[2]

The provisions both of this section and the preceding one which deal with certain estoppels arising on bills must be read with, and considered as supplemented by, the provisions of the Indian Evidence Act (I. of 1872). § 115 of that Act deals with estoppels generally. § 117 relates specially to the acceptor of a bill, and is as follows:—

§ 117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor hath, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation 1.—The acceptor of a bill of exchange *may* deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from

Negotiable instrument made, &c. without consideration.

[1] *Chalmers on Bills*, Art. 212; *Cooper* v. *Meyer*, 10 B. & C. 468.
[2] *Beeman* v. *Duck*, 11 M. & W., at p. 256.

SECTION 43.

the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

This section reproduces the English law on the subject.[1] For the definition of "consideration" under the Indian Contract Act, see note to § 9. The following cases illustrate its operation:—

1. The first indorser of an ordinary bill which is dishonoured is obliged to pay it. He can sue the drawer and acceptor.

2. A bill is drawn and accepted for the accommodation of the payee, who indorses it away. If it is dishonoured and he has to pay it, he cannot sue the drawer or acceptor.[2]

3. C., who holds a bill for consideration, indorses it to D. by way of gift. The property in the bill passes to D., but he cannot sue C. if it be dishonoured.[3]

4. A. and C. jointly supply goods to S. A. draws a bill on S. for the price and indorses it to C. to collect on joint account. If the bill is dishonoured C. cannot sue A.[4]

[1] *Chalmers on Bills*, Arts. 90-93.
[2] Cf. *Mills* v. *Barber*, 1 M. & W. 425.
[3] *Easton* v. *Pratchett*, 1 C. M. & R., at p. 808.
[4] *Denton* v. *Peters*, 5 L. R. Q. 475.

Partial absence or failure of money consideration.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

ILLUSTRATION.

A. draws a bill on B. for Rs. 500 payable to the order of A. B. accepts the bill, but subsequently dishonours it by non-payment. A. sues B. on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A. can only recover Rs. 400.[1]

This section reproduces the English law on the subject.[2]

If a bill were drawn and accepted for the accommodation of the payee, the acceptor would then stand in immediate relation with the payee.

Partial failure of consideration not consisting of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral inquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation

[1] See *Darnell* v. *Williams*, 2 Stark. 166

[2] *Chalmers on Bills*, Arts. 91-93.

SECTION 45. with such signer is entitled to receive from him is proportionally reduced.

This section reproduces the English law on the subject.[1]

Suppose A. agrees to sell two bales of cotton to B., and draws on him for the agreed price, namely Rs. 1,000. If B. accepts, and then A. only delivers one bale, A. can only recover Rs. 500 if he sue B. as acceptor of the bill [2]

[1] *Chalmers on Bills*, Art. 93.
[2] *Ibid.* and see *Agra Bank* v. *Leighton*, 2 L. R. Ex., at pp. 64, 65.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive. Section 46. Delivery.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

This section reproduces the English law on the subject.[1] The last two clauses of the section seem superfluous, as they are

[1] *Chalmers on Bills*, Arts. 53–55.

SECTION 47.

reproduced in §§ 47, 48. As to what parties stand in immediate relation, see § 44.

Delivery means transfer of possession, actual or constructive; therefore delivery is actual when it is accomplished by means of a transfer of the actual possession, while it is constructive if accomplished by means of the transfer of the constructive possession. A person is said to be in constructive possession of a thing, when that thing is in the actual possession of his agent, clerk, or servant on his behalf. Illustration (*a*) to § 47 is an example of actual delivery, while illustration (*b*) is an example of constructive delivery. Under § 7 it appears that an acceptance is complete as soon as it is notified to the holder. In this case, therefore, notification must be deemed to operate as a constructive delivery of the bill.

Post Office.

According to English law, when there is authority, express or implied, to send a bill or note by post, the post office is deemed to be the agent of the person to whom the bill is sent, therefore delivery is complete as soon as the letter containing the bill or note is posted.[1]

Issue.

The first time a bill or note is negotiated it is said to be issued.

Negotiation by delivery.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

ILLUSTRATIONS.

(*a*). A., the holder of a negotiable instrument payable to bearer, delivers it to B.'s agent to keep for B. The instrument has been negotiated.

[1] *Ex parte Cote*, 9 L. R. Ch. Ap. 27.

(*b*). A., the holder of a negotiable instrument payable to bearer, which is in the hands of A.'s banker, who is at the time the banker of B., directs the banker to transfer the instrument to B.'s credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B.'s agent. The instrument has been negotiated, and B. has become the holder of it.

NOTE.—This section reproduces the English law.[1] By § 54, instrument indorsed in blank becomes payable to bearer. By § 58 provision is made as to fraud or illegality. The meaning of the exception may be illustrated thus:- Suppose C. is the holder of a bill indorsed in blank, and therefore payable to bearer. He delivers it to D. to get it discounted for him. D. commits a fraud if he deals with it in any other way, as, for instance, if he pays it away for a debt of his own. Any person who took the bill from D., knowing the purpose for which the bill was given to D., could acquire no right or title thereto.[2]

Negotiation by indorsement.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

The exception to the last section ought to be repeated in this section. A bill may be specially indorsed by C. to D., but nevertheless delivered to him conditionally. See §§ 46, 58, and note to last section.

Conversion of indorsement in blank into indorsement in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an

[1] *Chalmers on Bills*, Arts. 107, 110.
[2] *Marston* v. *Allen*, 8 M. & W. 504.

SECTION 50.

indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

This section reproduces the English law on the subject.[1]

Effect of indorsement.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

ILLUSTRATIONS.

B. signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C. only."

(*b*) "Pay C. for my use."[2]

(*c*) "Pay C. or order for the account of B."[3]

(*d*) "The within must be credited to C."[4]

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."[5]

(*f*) "Pay C. value in account with the Oriental Bank."[6]

(*g*) "Pay the contents to C., being part of the consideration in a certain deed of assignment executed by C. to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

NOTE.—This section reproduces the English law on the

[1] *Chalmers on Bills*, Art. 118; *Vincent* v. *Horlock*, 1 Camp. 441.
[2] See *Edie* v. *East India Co.*, 2 Burr., at p. 1227.
[3] See *Treuttel* v. *Barandon*, 8 Taunt. 100.
[4] See *Archer* v. *Bank of England*, 2 Dougl. 637.
[5] See *Edie* v. *East India Co.*, 2 Burr. 1216.
[6] See *Buckley* v. *Jackson*, 3 L. R. Ex. 135.

subject.[1] It must be read subject to the provisions of § 46, as to conditional delivery. It is supplemented by § 52, which seems to recognise indorsements which are in terms conditional. To the illustrations may be added the common agency indorsement, "Pay D. or order for collection."[2] By § 17 of the German Exchange Law, if an indorsement be qualified by words such as "pro incasso," or "in procura.," or any form of words indicating agency, such indorsement does not transfer the ownership of the bill, but it empowers the indorsee to receive the proceeds, or to protest, give notice of dishonour, and bring an action for the recovery of the unpaid amount. An indorsee of this kind, if the indorsement contain the words "or order," but not otherwise, is able to transfer these powers by a further "procura." indorsement to another party. SECTIONS 51, 52.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same. Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.[3]

ILLUSTRATION.

A bill is drawn payable to A. or order. A indorses it to B., the indorsement not containing the words "or order" or any equivalent words. B. may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude Indorser who excludes his

[1] *Chalmers on Bills*, Arts. 107, 124.
[2] See *Sweeney* v. *Easter*, 1 Wallace, 166, Sup. Ct. U.S.
[3] *Edie* v. *East India Co.*, 2 Burr. 1216; *Chalmers on Bills*, Arts. 107, 124.

SECTION 52. own liability or makes it conditional.

his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

ILLUSTRATION.

(*a*). The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*). A. is the payee and the holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B., and A. indorses it to C., who indorses it to A. A. is not only reinstated in his former rights, but has the rights of an indorsee against B. and C.

NOTE.—In England the rule stated in the second clause might be stated more broadly, and would run as follows:—Where a bill or note is negotiated back to a party already liable thereon, he cannot sue any intermediate party who in turn would have a right of recourse against him, but he can sue any intermediate party who would not have such a right of recourse.[1]

The French expression "sans recours" is often used in English bills instead of without recourse. Indorsements frequently contain a stipulation waiving protest, and sometimes waiving notice. "Sans frais" and "sans protêt," are expressions often used for this purpose. This section distinctly recognises conditional indorsements. Their validity in England is doubtful, and their expediency still more doubtful. There is only one English decision on the subject, and

[1] *Morris* v. *Walker*, 15 Q. B 589; *Chalmers on Bills*, Art. 130; *Wilkinson* v. *Unwin*, 29 W. R. 458.

Sections 53, 54.

the judgments in the case are not reported. There the acceptor accepted after the conditional indorsement was on the bill, and it was held that as he had paid the bill without finding out that the specified condition was unfulfilled, he could be made to pay over again.[1] A drawer may not draw a bill conditionally (see § 5), why then should an indorser, who is in the nature of a new drawer, be allowed to indorse it conditionally, and to impose on the acceptor the burden of finding out at his peril whether the condition has been fulfilled or not? The best practical way of dealing with the matter would be this: let the indorser make his own liability conditional if he pleases. That only affects him and the persons who choose to take his bill. But let the conditional indorsee be entitled to collect the bill in any event. If the condition be fulfilled let him take the proceeds on his own account; if the condition be unfulfilled let him take them as agent or trustee for the conditional indorser. Suppose a bill held by C. is indorsed, "Pay D. or order if my wife be still living," the acceptor must pay the bill the day it matures. But unless he can find out for certain about C.'s wife it is uncertain whether the bill is payable to C. or to D. Under the suggested change the acceptor could be discharged by paying D., and he could leave C. and D., who made this special contract, to settle the matter between themselves.

Holder deriving title from holder in due course.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

This section reproduces the English law on the subject. The rule in England is subject to a qualification which would doubtless be applied in India; namely, that the holder with the derivative title must not himself have been a party to any fraud or illegality affecting the bill. The following case illustrates the rule. A bill which originally was obtained by fraud, gets into the hands of C., a holder in due course. C. indorses the bill to D. by way of gift. D. can sue the acceptor, for he stands on C.'s title.

Instruments

54. Subject to the provisions hereinafter

[1] *Robertson* v. *Kensington* (1811), 4 Taunt. 30; see *Chalmers on Bills*, Art. 123.

[2] *Chalmers on Bills*, Art. 87; *Masters* v. *Ibberson*.

Sections 55, 56.

contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof, even although originally payable to order.

Indorsed in blank.

This section reproduces the English law on the subject.[1] Under the French and several other Continental codes an indorsement in blank merely operates as a "procuration," constituting the holder a kind of agent for collection for the indorser.[2]

Indorsement in blank followed by indorsement in full.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

The side-note as given in the Act, *i.e.*, "conversion of indorsement in blank into indorsement in full," is wrong, and has been altered. The section represents the English law on the subject; namely, that the bill still remains payable to bearer by virtue of the uncancelled indorsement in blank, though the subsequent special indorser is only liable to a holder who makes title directly through his indorsement.[3] The rule may be illustrated as follows: C., the payee of a bill, indorses it in blank, and delivers it to D. Then D. specially indorses it to E. or order. E., without indorsement, transfers the bill to F. Then F. as the bearer is entitled to receive payment or to sue the drawer, the acceptor, or C., who indorsed in blank; but he cannot sue D. or E.[4]

Indorsement for part of sum due.

56. No writing on a negotiable instrument is

[1] *Chalmers on Bills*, Art. 116; *Peacock* v. *Rhodes*, 2 Dougl., at p. 636, per Lord Mansfield.

[2] See *Nouguier*, §§ 747-760, and Introd. *ante*, p. xvi.

[3] *Chalmers on Bills*, Art. 119.

[4] *Smith* v. *Clarke*, Peake 225; and cf. *Walker* v. *Macdonald*, 2 Exch. 527.

valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance. SECTIONS 57, 58.

This section represents the English law on the subject.[1] The following indorsements of a bill for Rs. 100, would be invalid for the purpose of negotiation.

1. Pay C. or order Rs. 50.

2. Pay C. Rs. 40, and the remainder to D. But an indorsement running, "Pay C. or order Rs. 50, being the unpaid residue of the bill," would be valid.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

This section reproduces the English law on the subject.[2] The reason is that a legal representative is not the agent of the deceased. The legal representative must himself re-indorse the bill and deliver it, in order to negotiate the bill. In doing so he should be careful in terms to exclude personal liability (see §§ 29, 52, and notes thereto).

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument ment obtained by unlawful means or for unlawful consideration.

[1] *Chalmers on Bills*, Art. 11.
[2] *Chalmers on Bills*, Art. 54; *Bromage* v. *Lloyd*, 1 Exch.

SECTION 58. is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Rights of indorsee.

This section reproduces the English law on the subject.[1] As to the definition of "holder in due course," see § 9. The paramount rights of such a holder are recognised by this section and constitute the main difference between the negotiation of a bill or note, and the transfer of any other chose in action, or personal property.

The nature of the rule incorporated in this section is very clearly brought out in a recent judgment of the New York Court of Appeal. The Court there say:—

"The general rule applicable to personal property is that the seller, although in possession of the property, can give no better title than he has. From the operation of this rule negotiable paper is excepted. The exigencies of business and commerce are such as to require the free circulation of such paper. It takes the place and to a large extent performs the office of money. It is used for the transaction of much the largest part of the business of mankind. It would be most embarrassing therefore if every taker of such paper was bound, at his peril, to inquire into the title of the holder, and if he was obliged to take it with all the imperfections and subject to all the defences which attach to it in the hands of the holder. It has therefore for more than 200 years been the settled law of England and this country, that a thief or any other person having possession of such paper, fair upon its face, can give a *bonâ fide* purchaser for value a good title to it against all the parties thereto, as well as the true owner. To have this quality it must be fair and regular upon its face; it must be payable to bearer, or to order and indorsed by the payee. A forged indorsement, no matter how cautious the purchaser may be, will give no title."[2]

[1] *Chalmers on Bills*, Arts. 88–96, 106.
[2] *Colson* v. *Arnot* (1874), 57 New York Rep., at p. 248.

Section 58.

Effect of forgery.

It is important to remember that a person who makes title through a forgery cannot claim the rights of a holder in due course, although he may have taken the bill for value and in perfect good faith. A forged indorsement (unless in the case of any particular party who is precluded by an estoppel from setting up the forgery) is regarded as a nullity, as if it were not on the bill at all.[1] The indorsement through which a holder in due course claims must be genuine. This principle is of universal application. Massé, in his "Droit Commercial et des Gens" (§ 1529), puts it well. He says:—

"Un endossement faux n'est pas translatif de la propriété parcequ'un endossement faux n'est pas à proprement parler un endossement, et ne peut des lors produire aucun effet, même vis-à-vis du porteur de bonne foi, dès que la fausseté lui en est opposée. Le porteur ne peut donc agir en vertu de cet endossement, ni contre le souscripteur, ni contre l'accepteur, ni contre les endosseurs qui précède le faux endossement; parceque vis-à-vis de tous ces co-obligés la transmission de la propriété s'arrête au faux ordre, et que, en ce qui les concerne tous ceux qui à partir du faux sont devenus porteurs de l'effet n'ont jamais été les légitimes propriétaires."

In *Robarts* v. *Tucker* (1851),[2] a bill was accepted payable at a banker's. The banker paid holder who claimed through a forged indorsement. The Court of Exchequer Chamber held that in the absence of circumstances creating an estoppel the banker could not charge his customer with this payment. Parke, B., in delivering their judgment remarks at p. 578, that, domiciling a bill at a banker's "is tantamount to an order, on the part of the acceptor, to the banker to pay the bill to the person who is according to the law merchant capable of giving a good discharge for the bill. If the bill is payable to order, it is an authority to pay the bill to any person who becomes holder by a *genuine indorsement*, and if the bill is originally payable to bearer, or if there is afterwards a *genuine indorsement in blank*, it is an authority to pay the bill to the person who seems to be the holder." Therefore, if a bill be

[1] *Chalmers on Bills*, Art. 81; *British Linen Co.* v. *Caledonian Ins. Co.* 4 Macq. (House of Lords), 107.
[2] 16 Q. B. 560.

Section 58.

Effect of forgery.

payable to John Smith or order, nobody but John Smith or some one lawfully acting in his behalf, and with power to sign for him, can indorse that bill so as to transfer the property therein, and if another person, whose name was John Smith also, were to get hold of the bill and indorse it, the transaction would still be a forgery and the property in the bill would not pass thereby.[1]

In an Indian case where a question arose as to the authority of an agent under a power of attorney to indorse bills made payable to the order of his principal, Lord Brougham in delivering the judgment of the Privy Council says:—"It is admitted on all hands that if M. & Co., having the bills in their possession, had no power to indorse them, their act of indorsation would convey no title to the party taking and discounting them any more than a forgery would do." He then proceeds to examine these terms of the power of attorney, and to decide that it conferred on the agent the power to indorse in his principal's name.[2]

Again, in *Harrop* v. *Fisher*,[3] where C., the holder of a bill payable to his order, delivered it for value to D. but omitted to indorse it, and D. indorsed it to himself in C.'s name, it was held that D. could not sue the acceptor as indorsee. Erle, C. J., in his judgment says:—"Indorsement carries with it so many consequences that to hold that a transferee may put upon a bill the name of a transferor which has been omitted by mistake or inadvertence, would, I think, be introducing a most dangerous degree of laxity into the title of instruments of such extreme value and importance to the commercial world." Further than this it has been decided that an express promise to indorse founded on consideration gives no authority to the promisee to indorse a bill in the name of the promisor.[4]

To multiply authorities would be tedious, but it may be worth while to work out one example. Suppose A. draws a bill on B. payable to C. or order, which is accepted. D. gets possession of the bill and without authority from C. indorses it in C.'s name (whether fraudulently or not is immaterial) to

[1] *Mead* v. *Young* (1790), 4 T. R. 28.
[2] *Bank of Bengal* v. *Fagan* (1849), 7 Moore P. C. 61, at p. 72.
[3] *Harrop* v. *Fisher* (1861), 10 C. B. N. S. 196.
[4] *Maron* v. *Pulling* (1814), 4 Camp. 50.

his own order. D. then indorses the bill to E., who takes it *bonâ fide* for value and without notice. First, E. cannot demand payment from the acceptor, and if the acceptor pays him, albeit in ignorance of the facts, he may have to pay over again to C. Secondly, E. cannot sue A. or C. as drawer or indorser. Thirdly, C. as the true owner can bring an action against E. to recover possession of the bill, and in the meantime can get an injunction to restrain E. from parting with it. Fourthly, E. has a title to the bill as against D. and can sue him as indorser, for D. by indorsing the bill guaranteed the genuineness of the previous signatures. Fifthly, supposing C.'s indorsement had been forged in blank, and D. had transferred the bill without indorsing it, E. could recover from D. whatever he had given for the bill as for a consideration which had wholly failed. Sixthly, supposing the acceptor had accepted the bill payable at his bankers', and they in ignorance of the facts had paid it, the acceptor's account could not be debited with the amount so paid, the bankers must bear the loss. SECTION 59.

By § 85 of this Act, a banker who pays a cheque whereon the indorsement of the payee has been forged is protected, and there is a corresponding statute in England.

It is a moot point in England whether a forgery, that is to say an unauthorized signature made with intent to defraud, is capable of ratification.[1]

As to estoppels see §§ 41, 42, *ante*, and §§ 88, 120-122 *post*, and notes thereto.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor: Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange Accommodation note or bill.

[1] *Chalmers on Bills*, Art. 81.

CHAPTER V.

OF PRESENTMENT.

SECTION 61. — Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

As to the expression "after sight," see § 21; and as to reasonable time, see § 105.

According to English law any person in possession of a bill is a "person entitled to demand acceptance." Bills are frequently forwarded unindorsed to an agent to get them accepted.[1] It is not clear why in the case of a non-trader a bill is required to be presented "in business hours." Perhaps this would be construed to mean at a reasonable hour. It

[1] *Chalmers on Bills*, Art. 149.

seems very doubtful how far a presentment through the post-office would be a compliance with this section. It is only in the case of non-acceptance that any question can arise as to the validity of the presentment. As regards holders subsequent to "the person making default," see § 59. SECTION 62.

The section only refers to bills payable after sight; therefore, in the absence of express stipulation, presentment for acceptance in the case of any other bill is optional. It is, of course, always desirable to get a bill accepted as soon as possible: (1) in order to get the security of the acceptor's name on the bill; or (2) in default, to get an immediate right of recourse against the drawer and indorsers. An agent to whom a bill is forwarded is liable to his principal in damages if he does not use due diligence in getting it accepted, and loss results therefrom.[1] German Exchange Law, Art. 24, provides that when a bill is drawn payable at the house of a third person (*e.g.* date bill drawn in London on Calcutta payable at a bank in Agra), the drawer may insert a stipulation requiring presentment for acceptance. In the absence of such a stipulation, it seems a date bill may be presented for payment at the place of payment, and, if payment be refused, treated as dishonoured, although the drawee has never had it presented to him.[2] When a bill comes forward very late it is sometimes necessary to do this in order to present it for payment on the day it becomes due.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Presentment of promissory note for sight.

[1] See *Pothier*, No. 128, and *Allen* v. *Sugdam*, 20 Wind. 321, as to date bills; and *Bank of Van Dieman's Land* v. *Victoria Bank*, 3 L. R. P. C., at p. 542, as to after sight bills.

[2] *Walker* v. *Stetson*, 2 Amer. R. 405.

Sections 63, 64.

As to the expression "after sight" in a note, see § 21. As to reasonable time, see § 105, where, however, the present case seems to have been omitted; but the analogy would hold good. Presentment is necessary in the case of a note payable after sight in order to fix the maturity of the instrument.

Drawee's time for deliberation

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

This section reproduces the English law on the subject, and the principle seems to be one of universal application.[1] At the expiration of the twenty-four hours the drawee must return the bill accepted or dishonoured. If he refuses to do so the holder must treat the instrument as dishonoured, and give the necessary notices (see § 83).

Presentment for payment.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder, as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.[2]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.[3]

This section reproduces the English law on the subject.

As to the title of a holder who acquires an instrument after notice of dishonour or when it is overdue, see § 59.

[1] *Chalmers on Bills*, Art. 154; French Code, Art. 125; German Exchange Law, Art. 20; *Bank of Van Dieman's Land* v. *Victoria Bank*, 3 L. R. P. C. 542.

[2] *Chalmers on Bills*, Art. 160.

[3] Ibid., Art. 287.

The "exception" is not really an exception, because the first clause only deals with presentment to charge the drawer or indorsers; §§ 68, 69, deal with presentment when it is required in order to charge the maker or acceptor. The practical result of the rule stated in the exception is this:—the maker cannot take advantage of any informality in the presentment to him. No one would be likely to commence an action against the maker of a note without having first demanded payment. If he did, the Court would visit such conduct with the costs of the action. SECTION 65

In the absence of some stipulation requiring it, presentment is not necessary to charge the acceptor of a bill or the maker of a note, for this reason: the maker or acceptor is the principal debtor, and the general rule of the common law is that the debtor is bound to seek out his creditor to pay him. Speaking of an overdue note, Parke, B., says: "Now it is clear that a request for the payment of a debt is quite immaterial, unless the parties to the contract have stipulated that it shall be made; if they have not, the law requires no notice or request; but the debtor is bound to find out the creditor and pay him when due."[1]

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours. Hours for presentment.

It is not clear why in the case of a non-trader presentment is required to be made during business hours. According to English law presentment must be made at a reasonable hour, and that in the case of a trader means business hours.[2] In the case of a non-trader 8 p.m. has been held a reasonable hour.[3] It has further been held that when presentment is made at an unreasonable hour, but payment is refused on some other ground, the bill is deemed to have been duly presented.[4]

[1] *Walton* v. *Mascall*, 13 M. & W., at p. 458. See further on the point *Cranley* v. *Hillary*, 2 M. & S. 120, and the note to *Wilmot* v. *Williams*, 7 M. & Gr., at p. 1018.
[2] *Chalmers on Bills*, Art. 163.
[3] *Triggs* v. *Newnham*, 10 Moore 249.
[4] *Henly* v. *Lee*, 2 Chitty R. 124; *Garnett* v. *Woodcock*, 6 M. & S. 44.

Sections 66–68.

Present-ment for payment of instru-ment pay-able after date or sight.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

This rule should perhaps be stated more generally, and should provide that a bill or note payable otherwise than on demand, must be presented for payment at maturity. At present the case of a bill payable "on the lapse of a certain period after the occurrence of a specified event" (see § 5, clause 2) is not expressly provided for.

As to the calculation of maturity, days of grace, and public holidays, see §§ 22–25.

To charge maker or acceptor.

According to English law when presentment is necessary in order to charge the acceptor of a bill, or the maker of a note, in the absence of an express stipulation to that effect, it is not necessary to present the bill or note on the day that it matures.[1] That is only necessary for the purpose of charging the drawer or indorser of a bill or the indorser of a note. But the present section seems to require that in all cases where presentment is necessary, it must be made on the day of maturity.

Present-ment for payment of promis-sory note payable by instal-ments.

67. A promissory note payable by instalments must be presented for payment on the third day after the day fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

The meaning of this section is not quite clear. Suppose default is made in presenting a note when the first instalment falls due. Is the indorser discharged altogether or only *quoad* that instalment? The point does not appear to have been decided in England.

Present-ment for payment

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a

[1] See *Ramchurn* v. *Radakissen*, 9 Moore P.C., at p. 70; *Smith* v. *Vertue*, 30 L. J. C. P., at p. 59.

specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Section 69. of instrument payable at a specified place and not elsewhere.

In England an acceptance to pay at a particular place (*e.g.* an acceptance running "Accepted—payable at the Union Bank") is deemed a general acceptance, and no presentment there is necessary to charge the acceptor. In order to compel presentment, the acceptor must accept the bill payable at a particular place, "and not otherwise or elsewhere."[1] Section 86 of this Act reproduces this rule for India. But what application has it to notes and cheques? A note possibly might be drawn in such a form; but according to English law whenever a note is in the body of it made payable at a particular place, it must be presented there in order to charge either the maker or an indorser.[2] The next section reproduces the English rule as regards the maker of a note, but makes no mention of the indorser of a bill or note.

As to the day of presentment, see note to § 66, and § 86.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place.

See note to last section. The case of the indorser of a bill, note, or cheque seems to have been forgotten.

The English rule on the subject of the place of presentment may be thus summed up: in order to charge the drawer or indorsers of a bill it must be presented at the proper place.

A bill is presented for payment at the proper place—

1. Where a place of payment is specified either by the drawer or the acceptor, and the bill is there presented.

Where a bill is made payable at a bank in a town where there is a clearing-house, presentment through the clearing-house is deemed to be a presentment at that bank.

[1] 1 & 2 Geo. IV., c. 78.
[2] *Chalmers on Bills*, Arts. 287, 288.

SECTIONS 70, 71.

2. Where alternative places of payment are specified, and the bill is presented at either of such places.

3. Where no place of payment is specified, but the address of the drawer or acceptor is given in the bill, and the bill is there presented.[1]

Secondly, as regards notes :—

1. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to charge the maker. In any other case, presentment for payment or demand is not necessary in order to charge the maker.

2. Presentment for payment is necessary in order to charge the indorser of a note.

3. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to charge an indorser; but when a place of payment is indicated at the foot of the note, and by way of memorandum only, presentment at that place is sufficient to charge the indorser, but a presentment to the maker elsewhere, if sufficient in other respects, also suffices.[2]

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

This section, presumably, does not give the holder an option where the drawee or maker has a place of business. It would be absurd to present a bill to a trader at his private house instead of at his office.

Presentment when maker, &c., has

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is

[1] *Chalmers on Bills*, Art. 167.
[2] Ibid., Arts. 287, 288.

specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Sections 72-74. — no known place of business or residence.

See § 76 as to excuses for non-presentment.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

See cheque defined by § 6, and note thereto. According to English law, the drawer of a cheque remains liable thereon until released by the Statute of Limitations, unless in the meantime the bank on which the cheque is drawn stops payment. If the bank stops payment he is discharged, provided the payee could with the exercise of reasonable diligence have presented the cheque before the stoppage.[1] The present section omits this important qualification, but the omission appears to be supplied by § 84. The two sections presumably must be read together. The point, however, is not quite clear.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

This section represents the English law on the subject.[2] As to reasonable time, see *post*, § 105. The general result of the English cases seems to be that a cheque should be presented or forwarded for presentment on the day after it is received.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand

Presentment of

[1] *Chalmers on Bills*, Art. 258; *Laws* v. *Rand*, 27 L. J. C. P. 76; *Heywood* v. *Pickering*, 9 L. R. Q. B. 432.

[2] *Hopkins* v. *Ware*, 4 L. R. Ex. 268; *Moule* v. *Brown*, 4 Bing. N. C. 266.

Sections 75, 76.

must be presented for payment within a reasonable time after it is received by the holder.

Instrument payable on demand.

§ 31 deals with the relations of the drawee of a cheque with the drawer. Its connection with the present section is not clear. See further §§ 72, 73, 84, as to cheques. As to reasonable time, see § 105. In England a promissory note payable on demand is deemed to be a continuing security.[1] By § 64, where a promissory note payable on demand is not payable at a specified place, no presentment is necessary to charge the maker.

Presentment by or to agent representative of deceased, or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

The terms of the section are not so wide as those of the side-note. The section says nothing of the person *by* whom presentment may be made. That is dealt with by §§ 61 and 64.

The terms of this section are permissive. It may be, then, that where the maker or acceptor is insolvent a presentment either to the party himself or to his assignee is sufficient.

If the drawee of a bill be dead, it is by no means clear that the holder is bound to take the acceptance of his legal representative.

See next section as to excuses for non-presentment.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

[1] *Chartered Bank* v. *Dickson*, 3 L. R. P. C. 571 : see at p. 574.

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Waiver.

This section in substance represents the English law on the subject of excuses for non-presentment.[1] German Exchange Law, Art. 42, provides that when the drawer or an indorser inserts the stipulation "protest waived," presentment for payment is not waived thereby, but it lies on such drawer or indorser to prove that the bill has not been duly presented.

[1] *Chalmers on Bills*, Art. 168.

SECTION 76.

Vis major.

This section takes no account of vis major as excusing due presentment. In England it is held that delay in presentment is excused where the delay is caused by circumstances beyond the control of the holder, and not imputable to his negligence.[1] Thus, when a bill was drawn in England on Paris, and in consequence of the Franco-Prussian war a moratory law was passed, postponing for three months the maturity of bills payable in Paris, it was held that an English drawer or indorser was liable in spite of the three months' delay in presentment.[2] So, too, the sudden illness or death of the holder might excuse delay in presentment. Perhaps in India this class of case is thought to be sufficiently provided for by § 5 of the Indian Contract Act, which runs as follows:—

§ 56. A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

The following cases illustrate the operation of clause (*d*):—

Accommodation bills, &c.

1. A bill is accepted for the accommodation of the drawer. C. also indorses it to accommodate the drawer. The bill is discounted, but the drawer does not provide the acceptor with funds to meet it at maturity. Due presentment for payment is necessary in order to charge C., but is not necessary in order to charge the drawer.[3]

2. A. draws a cheque on his bankers, not having nearly sufficient funds there to meet it, and having no reason to expect the bankers will honour an overdraft. Presentment is not necessary to charge A.[4]

In America there is a tendency to dispense with presentment when it would be futile—as for instance, when the acceptor is insolvent. This tendency is of doubtful expediency, and finds no favour in England. See *Baker* v. *Birch*, 3 Camp. 107, where it was held that presentment was necessary although the acceptor had told the holder he would not pay the bill. See further § 93, as to notice of dishonour.

[1] *Chalmers on Bills*, Art. 169.
[2] *Rouquette* v. *Overman*, 10 L. R. Q. B. 505.
[3] *Saul* v. *Jones*, 25 L. J. Q. B. 37.
[4] *Wirth* v. *Austin*, 10 L. R. C. P. 689.

Section 77.

Liability of banker for negligently dealing with bill presented for payment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

SECTIONS 78–79.

To whom payment should be made.

78. Subject to the provisions of section eighty-two, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Section 82, clause (*c*), refers to bills and notes which are payable to bearer or which have been indorsed in blank.

For a definition of holder, see § 8. A person who makes title to an instrument under a forged indorsement is not the holder thereof,[1] and, except in the case provided for by § 85, payment to a person who holds under a forgery is not a discharge as against the true owner. See note to § 58.

Having regard to the definition of "holder" in § 8, it seems that if C. is the holder of a bill payable to his order, and D., by fraud, induces C. to indorse the bill to him by an indorsement in full, payment in due course to D. is not a discharge; yet, if C. had indorsed the bill in blank, payment to D. would have been a discharge under § 82 (*c*). Can this be intended? It is clearly not English law.

See further the notes to §§ 8, 9, 14 and 58.

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until

[1] *Robarts* v. *Tucker*, 16 Q. B. 560; *Johnson* v. *Windle*, 3 Bing. N. C. 225; *Arnold* v. *Cheque Bank*, 1. C. P. D. 578.

tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs. SECTION 80.

According to English law, where a bill is expressed to be payable with interest at a specified rate, interest at that rate must be paid until the dishonour of the bill, but after dishonour the rate and allowance of interest is entirely a question for the tribunal. Interest by way of damages, where a contract is broken, is distinguished from interest proper, payable under a contract before it is broken.[1]

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs. Interest when no rate specified.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Section 532 of the Civil Procedure Code, which provides a summary procedure to enforce payment of bills and notes, is set out, *post*, p. 133.

This section is very loosely drawn. Suppose a note is expressed to be payable with interest, but no rate is specified, does interest run from the date of the note, or from the date of its dishonour? In England interest at 5 per cent. would

[1] *Chalmers on Bills*, Arts. 13, 213, 220; *Keene* v. *Keene*, 27 L. J. C. P. 88.

SECTION 81.

run from the date of the note.[1] As regards the "explanation," it is not apparent why the rule therein stated is confined to indorsers. The drawer of a bill is on precisely the same footing as an indorser. Again, in the cases where under § 98 notice of dishonour is unnecessary, is an indorser not liable to pay interest?

See further § 117 as to compensation, and note to last section.

Delivery of instrument on payment, or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

As to suing on a lost bill, see § 61 of the Civil Procedure Code, *post*, p. 131.

The Act does not say what the owner of a lost bill is to do, if the acceptor refuses to pay it under indemnity, in order to preserve his right of recourse against the drawer and indorsers. His proper course, probably, is to present a copy, and then give the ordinary notices of dishonour. In England protest may be made on a copy of a lost bill,[2] and the rule probably in most countries is the same.[3] In India the point must be regarded as open to doubt. See § 101, and note thereto.

The Act provides no machinery whereby the owner of a lost bill or note can get a duplicate from the drawer or maker.

[1] *Chalmers on Bills*, Art. 14.
[2] See ibid., Art 165.
[3] See *Pothier*, No. 145; French Code, Arts. 152, 153.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS, AND CHEQUES.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon— SECTION 82. — Discharge from liability.

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder; by cancellation;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge; by release;

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon. by payment.

This section represents the English law on the subject.[1] According to English law, and perhaps the same would be held in India, where laws conflict, the validity of a discharge is determined by the *lex loci contractus* of the party sought to be charged. The doubt arises as to an indorser, by reason of the terms of § 134.

This section must be read with and subject to §§ 39, 40, as to the discharge of a surety by dealing with the principal,

[1] *Chalmers on Bills*, Arts. 230-238.
[2] Ibid., Art. 231.

Sections 83–85.

and § 60, as to the power of any person except the drawee acceptor, or maker to re-issue a bill or note after payment.

See § 78, as to the payment of a bill which is not payable to bearer.

Discharge by allowing drawee more than twenty-four hours to accept.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

By § 63, *ante*, the drawee is entitled to retain a bill for twenty-four hours to consider whether he will accept it or no. At the expiration of this time the holder should demand the redelivery of the bill, and if the drawee does not return the bill duly accepted, the holder must treat the instrument as dishonoured, and give notice of dishonour, or cause it to be protested.

When cheque not duly presented and drawer damaged thereby.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

This section seems in the nature of a proviso to § 72. See that section and note thereto.

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Having regard to the definitions of "payee" in § 7, and "indorsee" in § 16, it seems doubtful whether the protection afforded by this section extends to any indorsement other than that of the original payee. The corresponding English enactment, 16 and 17 Vict., c. 59, expressly refers to the

indorsement of the payee, "or any subsequent indorsement." In England it has been that when the signature of the payee is indorsed "per proc." without authority, the banker who pays it is nevertheless protected by the statute.[1] SECTION 86.

not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) Where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) Where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) Where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place, and not otherwise or elsewhere;

(*d*) Where it undertakes the payment at a time other than that at which under the order it would be legally due.

[1] *Charles* v. *Blackwell*, 2 C. P. D. 151 C. A.

SECTION 87.

stranger, or as it is called "an act of spoliation," does not avoid a bill; but the Indian Act appears to adopt the English rule, which is that the holder of a bill having it in his custody is responsible for it, and for its preservation in its integrity.[1]

Material alterations.

Any alteration which varies the liabilities of the parties to a bill is material. In *Gardner* v. *Walsh*,[2] where it was held that the addition of a new maker to a joint and several promissory note after issue was a material alteration which avoided it. Lord Campbell says (p. 89): "There would be no difficulty in showing that under certain circumstances which might have supervened, this alteration might have been prejudicial to the defendant. But we conceive that he is discharged from his liability if the altered instrument would operate differently from the original instrument, whether the alteration be or be not to his prejudice. If a promissory note payable at three months after date were altered by the payee to six months, or if being made for £100 he should alter it to £50, we conceive that he could not sue the maker upon it after the alteration, either in its altered or original form. The alleged maker was no party to a note at three months or for £50; and the note at six months or for £100 to which he was a party is violated by the alteration."

The following are English instances of material alteration, namely: a particular consideration is substituted for the words value received,[3] or a bill payable three months after date is converted into a bill payable three months after sight;[4] or the date of a bill payable on demand is altered,[5] or the specified rate of interest is altered from 4 per cent. to 5 per cent. or *vice versâ*;[6] or a particular rate of exchange is indorsed on a bill which does not authorize this course;[7] or a place of payment is added without the acceptor's consent.[8]

[1] *Chalmers on Bills*, Art. 248; *Davidson* v. *Cooper*, 11 M. & W., at. p. 79. As to America, see *Dunsmore* v. *Duncan*, 57 New York R., at p. 581.
[2] 8 E. & B. 83.
[3] *Knill* v. *Williams*, 10 East, 431 (stamp).
[4] *Long* v. *Moore*, 3 Esp. 155, n.
[5] *Vance* v. *Lowther*, 1 Ex. D. 176.
[6] *Sutton* v. *Toomer*, 7 B. & C. 416.
[7] *Hirschfield* v. *Smith*, L. R. 1 C. P. 340.
[8] *Burchfield* v. *Moore*, 23 L. J. Q. B. 261.

The following are immaterial, namely; a bill payable to C. or bearer is converted into a bill payable to C. or order,[1] or the words "on demand" are added to a note in which no time of payment is expressed,[2] or the number on a bank-note is altered.[3] Sections 88, 89.

Even though an alteration may be assented to by the parties, it must be borne in mind that the provisions of the Stamp Act have to be reckoned with. A bill which has been materially altered becomes a new instrument requiring a new stamp. Stamp Laws.

As to alterations and their effect on the holder's right in England to sue for the consideration where he cannot sue in the instrument, see *Chalmers on Bills*, Arts. 247–251.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument. Acceptor or indorser bound notwithstanding previous alteration.

See note to last section.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the Payment of instrument on which alteration is not apparent.

[1] *Attwood* v. *Griffin*, 2 C. & P. 368.
[2] *Aldous* v. *Cornwall*, L. R. 3 Q. B. 573.
[3] *Suffell* v. *Bank of England*, 7 Q. B. D. 270. This case is now under appeal.

SECTION 94.

notice should be given.

or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

The meaning of this section is not quite clear. Can it mean that if a bill is indorsed by two joint payees, who are not partners, it is sufficient to give notice to one, or does it only refer to the case of partners?

Perhaps under this section it is necessary that notice, when given by an agent, should be given in the name of the person entitled to give notice. It seems from § 102, that a notary cannot give notice, at any rate in his own name. In England it is held that notice of dishonour may be given by an agent in his own name, or in the name of any party entitled to give notice.[1] It is further held that the drawer or acceptor may be constituted the agent of the holder to give notice of dishonour.[2]

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or

[1] *Harrison* v. *Ruscoe*, 15 M. and W., at p. 235.
[2] *Rosher* v. *Kieran*, 4 Camp. 86; *Bailey* v. *Bodenham*, 33 L. J. C. P., at p. 255; *Chalmers on Bills*, Art. 192.

written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended. SECTION 94.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

The object of giving notice is not to demand payment to the party giving the notice, but to warn the party notified of his liability, and in the case of the drawer to enable him to protect himself as against his correspondent the drawee or acceptor who has dishonoured his draft. For instance, when notice is given by an indorser to the drawer, it may be the holder and not the party who gave notice that the drawer will have to settle with.

The act requires NOTICE to be given: that is to say, actual notification. It is not sufficient that a party sought to be charged is aware of the dishonour.[1] As Pothier says, speaking of protests, "la raison est que les formalités établies par les lois pour donner à quelqu'un la connaissance de quelque fait, ne se suppléent point, et ne s'accomplissent pas par équipollence." Most of the Continental codes require every dishonoured bill to be protested, but in the case of inland bills notice of dishonour is the English substitute for protest.[2] The Indian Act has adopted the English rule.

English law does not require as of necessity a written

[1] *Miers* v. *Brown*, 11 M. & W. 372; *Chalmers on Bills*, Arts. 199, 200.
[2] *Solarte* v. *Palmer*, 7 Bing., at p. 533.

SECTIONS 95, 96.

notice of dishonour to be signed, though, of course, it should be signed.[1] And this section does not specify signature as one of the requisites of a written notice.

At one time notices of dishonour were strictly construed in England, but they are now construed very liberally, and since 1841, though the point has frequently been raised, no notice of dishonour has been held bad for insufficiency in point of form.[2] The notice, if written, must sufficiently identify the bill; but a misdescription of the bill does not vitiate the notice unless the party to whom notice is given is in fact misled thereby.[3] For forms of notice see Appendix II., *post* Forms, Nos. 6, 7.

Party receiving must transmit notice of dishonour

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

This section reproduces the English law on the subject.[4] As to reasonable time in this case, see *post*, §§ 106, 107.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

This section represents the English law on the subject.[5] The following English case illustrates its operation:—

[1] *Maxwell* v. *Brain*, 10 L. T. N. S. 301.
[2] *Chalmers on Bills*, Art. 199. For instances of notices held sufficient, see *Bailey* v. *Porter*, 14 M. & W. 44; *Paul* v. *Joel*, 28 L. J. Ex. 143; *Maxwell* v. *Brain*, 10 L. T. N. S. 301; *Bain* v. *Gregory*, 14 L. T. N. S. 601.
[3] *Chalmers on Bills*, Art. 199; *Stockman* v. *Parr*, 11 M. & W. 809.
[4] *Chalmers on Bills*, Art. 196
[5] Ibid.

A bill payable in London which has been indorsed in blank is deposited by the holder with a country banker for collection. The London agent of the country banker presents it for payment, and on its dishonour gives due notice thereof to the country banker. The country banker, on the day after the receipt of this notice, gives notice to his customer, who in turn gives notice to the indorser. The indorser has received due notice.[1]

Sections 97, 98.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory bill which is not negotiable; non-ac

(*g*) when the party entitled ,'without notice, knowing the facts, promises unconditionally to pay the amount due on the instrume Su

[1] *Bray* v. *Hadwen*, 5 M. & S. 68. See, ..., *Clode* v. *Bayley*, 12 M. & W. 15, as to the different branches of a ban'.

SECTION 98.

As to miscarriage of a notice sent by post, see § 94.

No distinction is drawn in the Act between excuses for non-notice and excuses for delay in giving notice. In England the rule may be thus stated: delay in giving notice is excused when the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his negligence; but when the cause of delay ceases to operate, notice must be given with reasonable diligence.[1]

As regards clause (*a*), it is held in England that notice of dishonour may be received either before the time for giving notice has arrived or after the omission to give notice.[2] The following cases illustrate the operation of clause (*c*) namely:—

1. A. draws a bill on B. who is under no obligation to accept or pay it, and has not held out that he will do so. A. is not entitled to notice of dishonour.[3]

2. A bill is accepted for the accommodation of the drawer, who does not provide the acceptor with funds to meet it. Notice of dishonour to the drawer is unnecessary.[4]

3. A. signs a bill as drawer in order to accommodate the acceptor. Notice must be given to A.[5]

4. A. draws, B. accepts, and C. indorses a bill in order to raise money for their joint benefit. Notice must be given to A. and C.[6]

As regards clause (*c*), it is not clear why it is confined to the case of an accepted bill. The same principle applies to an unaccepted bill. The rule in England extends to the case of a firm drawing on one of its branches in another place.[7]

[1] *Chalmers on Bills*, Art. 201.
[2] *Chalmers on Bills*, Art. 200; *Cordery* v. *Colville*, 32 L. J. C. P. 210.
[3] *Claridge* v. *Dalton*, 4 M. & S. 225; *Wirth* v. *Austin*, 10 L. R. C. P. 689.
[4] See *Bickerdike* v. *Bollman*, 2 Smith L. C. 50; *Sharp* v. *Bailey*, 9 B. & C. 44.
[5] *Sleigh* v. *Sleigh*, 5 Exch. 514. See *Turner* v. *Samson*, 2 Q. B. D. 22 C. A.
[6] *Foster* v. *Parker*, 2 C. P. D. 18.
[7] See *Miller* v. *Thompson*, 3 M. & Gr. 576; and see *Allen* v. *Sea. Ass. Co.* 9 C. B. 574.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

As to "reasonable time" for the purposes of this section, see § 105. In England the settled practice is to note a bill on the day that it is dishonoured, but it is not clear that noting on the following day might not be sufficient.[1] As to recovering the expenses of noting in a summary suit, see § 5[illegible]6 of the Civil Procedure Code, *post*, p. 135.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

SECTION 101.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

The Act contains no definition of reasonable time for the purposes of this section. In England noting is deemed an incipient protest, and when a bill has been duly noted, the formal protest may be drawn up, or as it is called, extended, at any subsequent time as of the date of the noting.[1]

By French Code, Art. 162, a bill is to be protested for non-payment on the day after it is due, and by German Exchange Law, Art. 41, a bill may be protested for non-payment on the day it is due and not later than the second day after. See the laws of different nations on this point collected, *Nouguier*, § 1270.

In England, where the service of a notary cannot be obtained, a protest may be drawn up by any substantial resident in the place of dishonour, in the presence of two witnesses. The Indian Act makes no provision for such a case.

Contents of protest.

101. A protest under section one hundred must contain—

(*a*) a copy either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

[1] *Gemlopulo* v. [illegible]

[2] *Byles*, 12 ed. p. 20[illegible] *Fowler*, 20 L. J. C. P. 105.

[illegible]9; cf. 9 & 10 Will. III., c. 17, § 1.

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public: the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found; SECTION 102.

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected. Act of honour.

An English protest is under seal; see a form in Appendix II., *post*, p. 147. The Indian Act only requires the signature of the notary making it.

The section requires the protest to contain either the instrument itself "or a literal transcript of it." It contains no express provision as to the protest of a bill which has been lost or destroyed, or which the drawee refuses to return. In England in such case protest may be made on a copy of the bill.[1] Perhaps the same would be held in India.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest. Notice of protest.

[1] *Brooks' Notary*, ed. 4, pp. 137 and 217.

SECTIONS 103, 104.

As to what is a sufficient notice of protest in England, see *Ex parte Lowenthall*, 9 L. R. Ch. Ap. 591. As to notice of dishonour under the Act, see §§ 93–98. For forms, see *post*, p. 146.

dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

This section reproduces the effect of the English statute 2 & 3 Will. IV., c. 38. Suppose a bill drawn on B. in Calcutta, payable in Agra, is dishonoured by non-acceptance. It may be protested in Agra for non-payment without being presented again to B. in Calcutta. See § 112, and note thereto.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

The practical effect of this section will be that all bills drawn out of British India must be protested. See, however, § 137 as to the onus of proof.

CHAPTER X.

OF REASONABLE TIME.

Sections 105, 106. — Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.[1]

Reasonable time, according to English law, is a mixed question of law and fact.[2]

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.[3]

See last section as to public holidays.

[1] See *Chalmers on Bills*, Art. 150; *Ramchurn* v. *Radakissen*, 9 Moore P.C 6; *Mellish* v. *Rawdon*, 9 Bing. 416.
[2] Ibid.
[3] See *Chalmers on Bills*, Art. 195; *Smith* v. *Mullet*, 2 Camp. 208.

Section 107.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to inforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

See § 95. That section and the present might conveniently have been fused into one section.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

SECTION 108, 109.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

In England it is said to be always optional with the holder to take or refuse an acceptance for honour.[1] In India, where there is a reference in case of need on the bill, it seems that the holder must take the acceptance of the drawee in case of need (see § 115), though in other cases he has an option. German Exchange Law, Art. 62, is to the same effect. In France, when a reference in need is given by the drawer, the holder is bound to present and take his acceptance, but when the reference is given by an indorser it seems he has an option.[2]

How acceptance for

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe

[1] *Byles*, 11 ed. p. 263; but see *Chalmers on Bills*, Art. 184.
[2] *Nouguier*, § 249.

Sections 110, 111.

Acceptance for honour must be made.

the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

In England it is no longer necessary for the acceptor for honour to appear personally before the notary. A clerk is usually sent.[1] It is not quite clear how, under this section, a firm or a corporation ought to accept for honour.

As to the estoppels which bind an acceptor for honour, see § 120, *post*.

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.[2]

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.[3]

[1] *Chalmers on Bills*, Art. 45; *Brooks' Notary*, ed. 4, p. 94.

[2] See *Chalmers on Bills*, Art. 47; German Exchange Law, Art. 59, to same effect.

[3] See *Chalmers on Bills*, Arts. 227, 228; and 6 & 7 Will. IV., c. 58.

Sections 112–114.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

It is not clear whether, in the case provided for by § 103, presentment to the drawee at his residence is required, or whether presentment at the place of payment is a sufficient presentment to the drawee for the purposes of this section.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Under the Continental codes if two or more persons offer to pay a bill for honour, he whose payment will liberate most parties to the bill must have the preference, and this is the English custom too. Thus, if one man offers to pay for the honour of an indorser, and another offers payment for the honour of the drawer, the holder is bound to take the payment of the latter. See further, note to § 109, *ante*.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

According to English law the payer for honour is subrogated for the holder and succeeds not only to his rights but also to

SECTIONS 115, 116.

his duties; as for instance, giving notice of protest if this has not been done.[1]

By German Exchange Law, Art. 63, which expresses the general custom on the subject, the payer for honour on payment of the amount of the bill and expenses is entitled to receive from the holder the bill itself and the protest.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

This section must apparently be read as a proviso to §§ 91, 92. The effect of it is to make presentment to the drawee in case of need obligatory. Some of the Continental codes qualify the duty thus cast on the holder by providing that the reference in need must be in the place where the bill is payable.

The Act does not provide within what time the bill must be presented to, or forwarded for presentment to, the drawee in case of need. Presumably, therefore, it must be done with reasonable diligence. Perhaps the case of presenting a bill to the acceptor for honour (§ 111) furnishes an analogy which would be followed.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

If a drawee in case of need accepts after protest with the usual formalities, he is of course an ordinary acceptor for honour. If he accepts under this section, the Act does not define his position. Is he an ordinary acceptor, or is he an acceptor for honour? The conditional liability of an acceptor for honour (see § 111) is very different from the absolute and primary liability of an ordinary acceptor. Again, what are his rights? Suppose a case of need named by an indorser accepts and pays the bill. Has he any right of recourse against the drawer(see § 114)? In the case of a bill drawn out of India it would be very imprudent for a drawee in case of need to accept otherwise than for honour in the usual way after protest.

[1] *Chalmers on Bills*, Art. 244; *Goodall* v. *Polhill*, 14 L. J. C. P. 146.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules:— SECTION 117 — Rules as to compensation.

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled

SECTION 117 to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

The "amount due upon the instrument" means presumably the amount of the bill or note with interest, as provided by §§ 79, 80.

The return bill described and authorized by clause (*e*) is called a re-draft. The English law on the subject of re-exchange and re-draft may be stated thus:—

(1.) The re-exchange is the measure of the loss resulting from the dishonour of a bill in a country different to that in which it was drawn or indorsed, and is ascertained by proof of the sum for which a sight bill, drawn at the time and place of dishonour on the place where the drawer or indorser sought to be charged resides, must be drawn in order to realize, at the place of dishonour, the amount of the dishonoured bill and the expenses consequent on its dishonour.

(2.) The holder of a dishonoured foreign bill is entitled to recoup himself by drawing a sight bill (called a re-draft) for such sum on the drawer, or any one of the indorsers.

(3.) An indorser who pays a re-draft may in like manner draw upon an antecedent party.

(4.) The expenses consequent on dishonour are the expenses of protest, postage, customary commission and brokerage, and, when a re-draft is drawn, the price of the stamp.[1]

[1] See Bills of Exchange Bill, 1881, § 62; and *Chalmers on Bills*, Art. 221.

SECTION 117.

According to English law it is doubtful whether, if a foreign indorser has to pay a dishonoured bill, he can recover any loss on re-exchange from the acceptor.[1]

Under the French Code (see Arts. 177–186) a re-draft (*retraite*) must be accompanied by a *compte de retour*, in which among other particulars the rate of exchange is officially certified by an *agent de change*. If there be no *agent de change* available the rate must be certified by two merchants.

As to suits under § 532 of the Civil Procedure Code, see *post*, p. 133, in Appendix.

[1] Compare *Re General Smith American Co.* 7 Ch. D. 637, with *Napier* v. *Schneider*, 12 East. 420. See *Chalmers on Bills*, Art. 213.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

SECTION 118.

118. Until the contrary is proved, the following presumptions shall be made:—

Presumptions as to negotiable instruments. Of consideration;

This clause must be read with clause (*g*).

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

This clause must be read with clause (*g*).

as to date;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of] acceptance;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

Suppose B. accepts, without dating his acceptance, a bill payable three months after date. He attains his majority the day before the bill matures. This is *primâ facie* evidence that B. accepted while he was a minor.[1]

as to time of transfer;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to order of indorsements;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

[1] *Roberts* v. *Bethell*, 12 C. B. 778.

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped; SECTION 118. as to stamp:

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him. that holder is a holder in due course.

Clauses (*a*) and (*g*) must be read together. Lord Blackburn thus explains the English law on the subject, which is substantially reproduced in this section. He says:[1] "I take it to be perfectly clear that when a bill of exchange is on the face of it a good bill, and there is nothing on the face of it to show the contrary, it *primâ facie* imports value. *Primâ facie*, a bill of exchange is a good bill of exchange, and it is necessary to show the contrary. . . . . But then I think it is clear, both upon the authorities, and also, as it seems to me, upon good sense, that when it is shown that a bill of exchange was a fraudulent one, or an illegal one, or a stolen one, in any of those cases it being known that the person who holds it was a party to that fraud, to that illegality, or to that theft, and therefore could not sue upon it himself, the presumption is so strong that he would part with it to somebody who could sue for him, that that shifts the burden. That has been decided over and over again. The consequence is, that the man who sues has, in that case, the onus upon him to prove that he gave value. I should be unwilling to say precisely whether it shifts the onus upon him to show that he gave value *bonâ fide*, so that although he gave value he must give some affirmative evidence to show that he was doing it honestly, or whether Burden of proof.

[1] *Jones* v. *Gordon* (1877), 2 App. Cas. at p. 627, H. L.

SECTION 119.

the onus of proving that he is dishonest, or that he had notice of things that were dishonest, remains on the other side, although he is bound to prove value. The language of the quotation from Baron Parke would seem to show that the onus as to both is shifted; but I do not think that has ever been decided. I have no doubt, however, that in proving value, it may be proved that he himself took the bill under such circumstances, that although he gave value he could not sue upon it."

The following cases illustrate the operation of the rule :—

1. The holder of a bill sues the acceptor. It is proved that the acceptor accepted the bill without receiving value, and to accommodate the drawer. The holder is not called on to prove that he gave value.[1]

2. An acceptance is given in renewal of a bill which turns out to be a forgery. The genuine bill is negotiated and the holder sues the acceptor. The holder must prove that he is a holder in due course.[2]

Presumptions generally.

See further as to presumptions § 114 of the Indian Evidence Act (Act I. of 1872), which lays down the general rule that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case. And see illustration (c) thereto.

Presumption on proof of protest.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

This section is curiously expressed, but it evidently means that protest of a bill is *prima facie* evidence that it has been duly presented for acceptance or payment, as the case may be, and dishonoured. As to dishonour, which is a technical term,

[1] *Mills* v. *Barber*, 1 M. & W. 425.
[2] *Mather* v. *Maidstone*, 1 C. B. N. S. 273.

see §§ 91, 92, 115. It seems a pity that a similar effect has not been given to the noting of a bill or note. Sections 120, 121.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn. Estoppel against denying original validity of instrument.

This section represents the English law as regards the maker of a note[1] and the drawer of a bill.[2] As regards an acceptor for honour, the English law seems to be that he is bound by any estoppels which would bind an ordinary acceptor, and also by any estoppels on the bill which would bind the party for whose honour he accepted.[3]

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same. Estoppel against denying capacity of payee to indorse

This section represents what is probably the English law on the subject, though the point is not quite clear.[4]

See further as to the estoppels which bind an acceptor §§ 41, 42, and the notes thereto.

It is to be noted that in India, the acceptor of a bill is allowed to set up that the drawer's signature is a forgery, see § 117 of the Indian Evidence Act (I. of 1872), while in England he is not allowed to do so; for it is held that he is bound to know his own correspondent's signature.[5]

[1] *Chalmers on Bills*, Art. 291; *Drayton* v. *Dale*, 2 B. & C. 293.
[2] *Chalmers on Bills*, Art. 216; *Collis* v. *Emmet*, 1 H. Bl. 313.
[3] *Phillips* v. *Im Thurm*, 1 L. R. C. P. 471.
[4] *Chalmers on Bills*, Art. 212.
[5] *Sanderson* v. *Colman*, 4 M. & Gr. 209.

Section 122.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.[1]

[1] See *Thicknesse* v. *Bromilow*, 2 Cr. & J. 425; *McGregor* v. *Rhodes*, 6 E. & B. 266.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque crossed

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

The provisions of this chapter are taken from and correspond with the provisions of the English Crossed Cheques Act, 1876 (39 & 40 Vict., c. 81). The present section corresponds with § 4 of the English Act.

Cheque crossed specially

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

See § 4 of the 39 & 40 Vict., c. 81.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

SECTIONS 126–128.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

See § 5 of the 39 & 40 Vict., c. 81. Presumably a cheque may be crossed by the drawer, but the Act does not say so in terms; and as a rule the term holder does not include the drawer of a bill or cheque before issue. See the terms "drawer" and "holder" defined, *ante*, by §§ 7 and 8. Perhaps the words "where a cheque is uncrossed," should be read "where a cheque is uncrossed by the drawer," &c.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

See § 7 of the 39 & 40 Vict., c. 81. As to the consequence of disobeying these rules, see *post*, § 129.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

See § 8 of the 39 & 40 Vict. c. 81. The Act does not specify the consequence of disobeying this rule. Presumably, the banker in such case would pay at his peril, and be liable to the true owner of the cheque if payment were made to the wrong person.

128. Where the banker on whom a crossed

cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Sections 129, 130

Payment in due course of crossed cheque.

See § 9 of the 39 & 40 Vict., c. 81.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Payment of crossed cheque out of due course.

See § 10 of the 39 & 40 Vict., c. 81.

There is no privity of contract between the holder of a cheque and the banker on whom it is drawn,[1] therefore the banker incurs no liability to the *holder* by refusing to pay a crossed cheque; his only liability is to drawer (see § 31). If the banker pays the cheque in contravention of the directions of the crossing, he is liable under this section to the true owner for his breach of a statutory duty.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque

Cheque bearing "not negotiable."

[1] *Hopkinson* v. *Forster*, 19 L. R. Eq. 74; *Chalmers on Bills*, Art. 210.

SECTION 131. than that which the person from whom he took it had.

See § 12 of the 39 & 40 Vict., c. 81. The term "not negotiable" in this chapter is somewhat misleading, having regard to the terms of § 13, which define "a negotiable instrument." A cheque crossed "not negotiable" is still transferable, but it is shorn of the main feature of negotiability, which is that a holder with a defective title can give a good title to a subsequent holder in due course. A cheque so crossed is in effect put precisely on the footing of an overdue bill (see § 59). If the holder has a good title, he can still transfer it with a good title. The following case may be put to illustrate the operation of the section:—

A cheque payable to bearer, crossed generally and with the words "not negotiable," is stolen. The thief gets a tradesman to cash it for him. The tradesman, who acts in perfect good faith, pays the cheque in to his bankers, who present it and obtain payment. The banker who pays the cheque (see § 128) and the banker who collects the cheque (see § 131) are protected, but the tradesman is liable to refund the money to the true owner. Again, assuming the cheque to have been stopped, the tradesman who cashed it could not sue the drawer.

Non-liability of banker receiving payment of cheque.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

See § 12 of the 39 & 40 Vict., c. 81, as interpreted by *Mathiesen* v. *London and County Bank*, 5 C. P. D. 7, which was a case of a forged indorsement.

CHAPTER XV.

OF BILLS IN SETS.

Section 132.

Set of bills.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

This section represents the English law on the subject.[1] In India and in England it is, it seems, optional with the drawer to give a set, but under the Continental codes it is usually obligatory. Arts. 66–68 of the German General Exchange Law provide as follows:[2]—

66. "The drawer of a bill is bound to deliver to the remitter on demand several copies of the bill, which in context must be described as prima, secunda, tertia, &c., failing which each bill shall be held to be a separate bill ("sola-wechsel"). An indorsee may also claim a duplicate of the bill. For this purpose he must apply to his immediate indorser, who on his part applies to his indorser, so as the demand shall go back

[1] *Chalmers on Bills*, Arts. 25–29.
[2] Parliamentary Paper, C. 2609 of 1880.

SECTION 133.

at last to the drawer. Every indorsee can claim from his immediate indorser that prior indorsements should be repeated on the duplicate.

67. "If one out of several copies of a bill be paid, then the others are extinguished. Yet liability on the others shall still exist for the following parties :—

"(1) The indorser who indorsed several copies of the same bill to different parties, and all subsequent indorsers whose signatures are on the copies not returned on payment; each respectively on his indorsements :

"(2) The acceptor, who accepted several copies of the same bill, on the acceptance of the copies not returned on payment.

68. "Any person sending one of several copies of a bill for acceptance is bound to note on the others in whose hands the copy sent for acceptance is to be found. Neglect of this form does not annul the bill. The possessor of a copy of a bill sent for acceptance is bound to deliver it to the person who proves himself to be indorsee or otherwise authorized to receive it."

Holder of first acquired part entitled to all.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.[1]

[1] See *Holdsworth* v. *Hunter*, 10 B. & C. 449; *Chalmers on Bills*, Art. 80.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Section 134.

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

ILLUSTRATION.

A bill of exchange was drawn by A. in California, where the rate of interest is 25 per cent., and accepted by B., payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B. in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A. is charged as drawer, A. is liable to pay interest at the rate of 25 per cent.[1]

NOTE.—This section reproduces the English law as regards the drawer and acceptor of a bill, but departs from it as regards the indorser. An indorser, according to English law, is regarded as in the nature of a new drawer, and his liabilities, it seems, are in general regulated by the law of the place where he indorsed the instrument,[2] but the point is not quite settled.

In a case in the Privy Council Lord Cranworth thus defines the nature of the drawer's contract when a bill is drawn in one country but accepted and payable in another:—

[1] See *Gibbs* v. *Fremont*, 9 Exch. p 30.
[2] *Allen* v. *Kemble*, 6 Moore P. C., at 321; *Chalmers on Bills*, Art. 60.

SECTION 135.

"The drawer, by his contract, undertakes that the drawee shall accept, and shall afterwards pay the bill according to its tenour, at the place and domicile of the drawee if it be accepted generally; at the place appointed for payment, if it be drawn or accepted payable at a different place from the place of the domicile of the drawee. If this contract of the drawer be broken by the drawee, either by non-acceptance or non-payment, the drawer is liable for payment of the bill, not where the bill was payable by the drawee, but where he, the drawer, made his contract, with interest, damages and costs, as the law of the country where he contracted may allow. In every case of a bill the intention and the agreement are that the bill shall be paid in the country upon which it is drawn. But it is admitted that if this payment be not so made, the drawer is liable according to the laws of the country *where* the bill was drawn, and not of the country *upon which* the bill was drawn."[1]

If an acceptor accepts a bill in one country, but makes it payable in another (as, for instance, a bill accepted in Egypt, payable in India), his liabilities are regulated according to the law of the latter country, according to the maxim *unusquisque in eo loco contraxisse intelligitur in quo ut solveret se obligavit.*

Law of place of payment governs dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

ILLUSTRATION.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

[1] *Allen* v. *Kemble*, 6 Moore P. C. 321.

This section represents the English law on the subject.[1] It is an application of the maxim, *locus regit actum*. SECTION 136.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India. Instrument made, &c., out of British India, but in accordance with its law.

This section seems to have been taken in part from Art. 85 of the German General Exchange Law, which provides as follows:[2]—

"85. The chief essentials of a bill, as well as of any declarations on bills drawn abroad, shall be judged according to the law of the place of making.

"If such declarations made abroad should be in accord with the German law, yet not with the law of the foreign country in which they were made, that shall be no reason why declarations afterwards made on the same bill in Germany should not be enforcible there.

"Declarations on bills again, by which a German contracts his liability to a German abroad, are good so long as they are in accord with the requirements of German law."

The Act is silent on the subject of foreign stamp laws. The English law on the subject may be thus stated. When a bill, issued abroad, is absolutely void, not merely inadmissible in evidence because it is not stamped in accordance with the law of the place of issue, it is, perhaps, void in England.[3] But, apart from this, English courts do not regard the revenue laws of other countries; and this seems right, as the Stamp Act Foreign stamp laws.

[1] *Chalmers on Bills*, Arts. 180, 202; *Rouquette* v. *Overman*, 10 L. R. Q. B. 525; *Horne* v. *Rouquette*, 3 Q. B. D. 514, C. A.

[2] Parliamentary Papers, C. No. 2609 of 1880.

[3] *Bristowe* v. *Sequeville*, 5 Exch., at p. 270; *Westlake*, § 176; *sed contrà*, ..., 12 ed. p. 403.

SECTION 137.

requires bills issued abroad to be stamped in England, and makes no allowance for the foreign stamp.

Presumption as to foreign law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

SCHEDULE.

(*a*)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(*b*)—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI. of 1840	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V. of 1866	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV. of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI. of 1840 and Act V. of 1866, sections 11, 12 and 13.

APPENDIX I.

PROVISIONS OF MISCELLANEOUS ENACTMENTS AFFECTING NEGOTIABLE INSTRUMENTS.

THE INDIAN COMPANIES ACT. (ACT X. OF 1866.)

Publication of name by limited company.

§ 40. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position in letters easily legible, in the English language, and also if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district.

And shall have its name engraven in legible letters in such language or languages on its seal. And shall have its name mentioned in legible characters in such language or languages in all notices, advertisements, and other official publications of such company, and in all *bills of exchange, hundis, promissory notes, indorsements, cheques, and orders for money* or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and *letters of credit* of the company.

Penalties for default.

§ 41. If any limited company under this Act does not paint or affix, or keep painted or affixed, its name, in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and

for every day during which its name is not so kept painted or affixed.

Every director and manager of the company who shall knowingly and wilfully authorize or permit such default, shall be liable to the like penalty.

If any director, manager, or officer of such company, or any person on its behalf uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues, or authorizes the issue of any notice, advertisement, or other official publication of such company, *or signs, or authorizes to be signed* on behalf of such company, any *bill of exchange, hundi, promissory note, indorsement, cheque, order for money* or goods, or issues, or authorizes to be issued, any bill of parcels, invoice, *receipt, or letter of credit*, whereon its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, *and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque, or order for money* or goods, for the amount thereof, unless the same is duly paid by the company.

NOTE.—This section and the preceding one correspond with, and are adapted from §§ 41, 42, of the English statute, the Companies Act, 1862 (25 & 26 Vict., c. 89). Under the similar wording of the statute, 19 & 20 Vict., c. 47, § 31, it was held that where a bill was addressed to a limited company thus: "To the Saltash Watermen's Steam Packet Co.," omitting the word "limited," and the secretary accepted it thus: "Accepted, John Martyr, secy. to the said Co.," the secretary was personally liable on the acceptance (*Penrose* v. *Martyr*, (1858), E. B. & E. 499).

Contracts how made.

§ 42. Contracts on behalf of any company registered under this Act may be made as follows, that is to say:—

(1) Any contract which, if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged.

(2) Any contract which, if made between private persons would be by law required to be in writing signed by the

parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

(3) Any contract which, if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

And all contracts, made according to the provisions herein contained, shall be effectual in law, and shall be binding upon them and their (*sic*) successors, and all other parties thereto, their heirs, executors or administrators as the case may be.

NOTE.—This section corresponds with the provisions of § 37 of the English statute, the Companies Act, 1867 (30 & 31 Vict., c. 131), and is taken from, and reproduces the provisions of the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16)..

Bills, and notes, and cheques come within the scope of sub-section 2, and that sub-section must therefore be read with § 47, which deals specially with bills, notes, and hundis.

Bills, notes, and hundis.

§ 47. A promissory note, bill of exchange or hundí shall be deemed to have been made, accepted or indorsed on behalf of any company under this Act, if made, accepted or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted or indorsed, by or on behalf or on account of the company, by any person acting under the authority of the company.

NOTE.—This section must be read with the more general of § 42, sub-section 2, *supra*. It is taken from and exactly corresponds with § 47 of the English Companies Act, 1862 (25 & 26 Vict., c. 89). As the wording of the sections is identical it is clear that the English decisions are strictly in point.

This section merely prescribes how companies having power to bind themselves by negotiable instruments are to exercise that power. It does not confer on all companies under the Act the power to render themselves liable on a bill or note, See as to this point § 26, *ante*, p. 38, and note thereto; also *Re Peruvian Railway Co.* (1867), 2 L. R. Ch. Ap. 617.

A person who desires to fix a limited company with liability on a bill must ask three questions: (1) Has the company power to bind itself by bill? (2) Is the signature on the bill in such form as to bind the company? (3) Was the signature placed there by some person acting under the authority of the company?

There is this difference between the acceptance of a company on a bill, and its other contracts on negotiable instruments—the address to the drawee must be looked at as well as the form of the acceptance, and the two must be read together.

Thus in *Okell* v. *Charles* (1876), 34 L. T. 822, C. A. a bill was addressed "to the Snowdon Copper Mining Co., Limited." The bill was accepted by two directors thus: "Accepted—S. Macdonald, R. Charles, Directors of the Snowdon Copper Mining Co., Limited," it was held that this was the acceptance of the company, and not of the directors personally.

But in *Herald* v. *Connah* (1876), 34 L. T. 885, where a bill was addressed "to H. Connah, Esq., general agent of the X. company," and he accepted thus: "Accepted—on behalf of the company, H. Connah," it was held that he was personally liable as acceptor. In that case, Bramwell, B., points out that the proper way of accepting for a company is by a procuration signature.

In *Dutton* v. *Marsh* (1871), 6 L. R. Q. B. 361, the note was in this form:—

"We the Directors of the Isle of Man Slate Co., Limited, promise to pay J. D. £1,000, for value received." (Signed)

"R. Marsh,

"H. Johnson."

In the corner of the note was the official seal of the company. It was held that the directors who signed were personally liable on this note; see further *Courtauld* v. *Saunders* (1867), 16 L. T. N. S. 562, and the notes to this section in *Buckley's* edition of the Companies Acts.

See some general remarks on this section and its scope in *Ex parte Overend*, 4 L. R. Ch. Ap., at pp. 472, 473.

(THE INDIAN LIMITATION ACT.)
ACT XV. OF 1877.

Interpretation.

§ 3. "Bill of Exchange" includes also a hundí and a cheque.

"Promissory Note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight.

Dismissal of suits after prescribed periods.

§ 4. Subject to the provision contained in §§ 5–25 inclusive every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed shall be dismissed, although limitation has not been set up as a defence.

SECOND SCHEDULE.

(SUITS.)

DESCRIPTION OF SUIT.	PERIOD OF LIMITATION.	TIME FROM WHICH PERIOD BEGINS TO RUN.
54. For the price of goods sold and delivered, to be paid for by a bill of exchange, no such bill being given.	3 years.	When the period of the proposed bill elapses.
58. [For money payable for money lent] when the lender has given a cheque for the money.	Do.	When the cheque is paid. (See *Garden* v. *Bruce*, 8 L. R. C. P. 300.)
69. On a bill of exchange or promissory note payable at a fixed time after date.	Do.	When the bill or note falls due.
70. On a bill of exchange payable at sight or after sight, but not at a fixed time.	Do.	When the bill is presented.
71. On a bill of exchange accepted payable at a particular place.	Do.	When the bill is presented at that place.
72. On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Do.	When the fixed time expires.
73. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue. [But see No. 76.]	Do.	The date of the bill or note. (See *Norton* v. *Ellam* 2 M. & W. 461; as to what bills or notes are in legal effect payable on demand, see §. 21 of the Negotiable Instruments Act, *ante*, p. 33.)

DESCRIPTION OF SUIT.	PERIOD OF LIMITATION.	TIME FROM WHICH PERIOD BEGINS TO RUN.
74. On a promissory note or bond payable by instalments.	Do.	The expiration of the first term of payment, as to the part then payable, and for the other parts the expiration of the respective terms of payment.
75. On a promissory note or bond payable by instalments which provides that if default be made in payment of one instalment the whole shall become due.	Do.	When the first default is made, unless the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Do.	The date of the delivery to the payee.
77. On a dishonoured foreign bill where protest has been made and notice given.	Do.	When the notice is given.
78. By the payee against the drawer of a bill of exchange which has been dishonoured by non acceptance.	Do.	The date of the refusal to accept.
79. By the acceptor of an accommodation bill against the drawer.	Do.	When the acceptor pays the amount of the bill. (See *Reynolds* v. *Doyle*, 1 M. & Gr. 753.)
80. Suit on a bill of exchange, promissory note, or bond not herein expressly provided for.	Do.	When the bill, note, or bond becomes payable.
91. To cancel or set aside an instrument not otherwise provided for.	Do.	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92. To declare the forgery of an instrument issued or registered.	Do.	When the issue or registration becomes known to the plaintiff.
115. For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Do.	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs.

NOTE.—An action on a bill or note must be distinguished from an action arising out of the bill transaction, but not brought on the instrument itself. For instance where a banker having funds, dishonours his customer's cheque, and the customer sues him for damages, this is not an action on the cheque, but on a collateral matter to which the cheque gave rise.

THE CIVIL PROCEDURE CODE.

(ACT X. OF 1877, AS AMENDED BY ACT XII. OF 1879).

§ 29. The plaintiff may at his option join as parties to the same suit, all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundís, and promissory notes. Joinder of parties liable on bill or note.

NOTE.—The holder of a dishonoured bill may either sue separately the drawer, the acceptor, and each of the indorsers, or he may bring one action against all or any of them. Each party sued may of course rely on any special ground of defence which he may have, though such defence may not be open to the other defendants.

By virtue of § 43, however, which provides that a suit must include the whole claim against a particular defendant, it has been held that when two or more instalments of a promissory note, payable by instalments, are due, the holder of the note is not at liberty to sue for such instalments separately, he must sue for all the instalments due in one action. A judgment recovered in a suit for one instalment, when others are due, is a bar to a suit subsequently brought for such other instalments, *Macintosh* v. *Gill*, 12 Beng. L. R. 37.

§ 61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff to the satisfaction of the Court against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the time delivered a copy of the instrument to be filed with the plaint. Suits on lost negotiable instruments.

NOTE.—Compare the analogous provisions of the English Common Law Procedure Act, 1854 (17 & 18 Vict., c. 125, § 87), and see *Chalmers on Bills*, Art. 144. See also § 81 of the Negotiable Instruments Act, *ante*.

Execution of Decrees.

§ 261. If the decree be for the execution of a conveyance or for the indorsement of a negotiable instrument, and the Decree for indorse-

negotiable instruments, &c.

judgment debtor neglects or refuses to comply with the decree, the decree holder may prepare the draft of a conveyance or indorsement, in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto, shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree holder may also tender to the Court a duplicate of the draft for execution upon the proper stamp paper, if a stamp is required by law. On proof of such service, the Court, or such officer as it appoints in their behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same so as to bring it into accordance with the terms of the decree, and execute the duplicate so altered.

Provided that if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing, and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

Form and effect of indorsement by court.

§ 262. The execution of a conveyance, or the indorsement of a negotiable instrument by the Court under the last preceding section, may be in the following form: "C. D., Judge of the Court of ———— (*or as the case may be*), for A. B., in a suit by E. F. against A. B.," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or indorsement of the instrument by the party ordered to execute or indorse the same.

Attachment of Property.

Attachment of negotiable instruments.

§ 270. If the property be a negotiable instrument, not in deposit in a court, the attachment shall be made by actual seizure, and the instrument shall be brought into court, and held subject to the further orders of the Court.

Sale of Movables in Execution.

Rules as to negotiable instruments.

§ 296. If the property sold be a negotiable instrument, or a share in any public company or corporation, the Court may,

instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market rate of the day.

Delivery of instruments actually seized.

§ 299. When the property sold is a negotiable instrument, or other movable property of which actual seizure has been made, the property shall be delivered to the purchaser.

Transfer of negotiable instruments.

§ 302. If the indorsement or conveyance of the party in whose name a negotiable instrument, or a share in any public company is standing, is required to transfer such instrument or share, the Court may indorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The indorsement or execution shall be in the following form, or to the like effect: "A. B. by C. D., Judge of the Court of (*or as the case may be*) in a suit by E. F. against A. B."

Until the transfer of such instrument or share the Court may by order appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same, and any indorsement made, or document executed, or receipt signed as aforesaid, shall be as valid and effectual for all purposes as if the same had been made, or executed, or signed by the party himself.

Summary Procedure on Negotiable Instruments.

Institution of summary suits on bills and notes.

§ 532. In any Court to which this section applies, all suits upon bills of exchange, hundís or promissory notes may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this code; but the summons shall be in the form in the fourth schedule hereto annexed, No. 172 (p. 136), or in such other form as the High Court may from time to time prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a judge as hereinafter mentioned so to appear and defend.

And in default of his obtaining such leave, or of appearance and defence in pursuance thereof, the plaintiff shall be entitled

to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *primâ facie* sustainable or feels reasonable doubt as to its good faith.

Explanation.—This section is not confined to cases in which the bill, hundí, or note sued upon, together with mere lapse of time, is sufficient to establish a *primâ facie* right to recover.

NOTE.—In England a similar procedure was provided by the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict., c. 67), and the procedure thus introduced has, with some modifications, been applied to all actions for liquidated demands by O. XIV. of the Rules of the Supreme Court of Judicature.

Under the English statute it has been held that the term "bill of exchange" for the purposes of the Act includes a cheque (*Eyre* v. *Waller*, 29 L. J. Ex. 246).

Leave to defend will be granted whenever some plausible ground for supposing there may be a substantial defence is disclosed (*Clay* v. *Turley*, 27 L. J. Ex. 2; *Freeland* v. *Stevens*, 30 L. J. Ex. 1; *Agra Bank* v. *Leighton*, 2 L. R. Ex. 56; *Lloyd's Bank* v. *Ogle*, 1 Ex. D. 262.

Where leave to defend is given the defence at the trial is not limited to the grounds on which leave to defend was given (*Saul* v. *Jones*, 1 E. & B. 591).

Defendant showing defence on merits to have leave to appear.

§ 533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application; and on such terms as to

security, framing and recording issues, or otherwise, as the Court thinks fit.

Power to set aside decree.

§ 534. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

NOTE.—Compare the analogous terms of § 3 of the 18 & 19 Vict., c. 67, and for instances where the power has been exercised under this and the Indian Act, see *Leigh* v. *Baker*, 2 C. B. N. S. 367; *Oake* v. *Moorcroft*, L. R. 5 Q. B. 76; *Chandra Kant* v. *Pogose*, 3 Beng. L. R. 83; *Joseph* v. *Solano*, 9 Beng. L. R. 441.

Deposit of bill in court.

§ 535. In any proceeding under this chapter the Court may order the bill, hundí or note on which the suit is founded, to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

NOTE—These provisions are of use where bills have been forged or obtained by fraud. Compare § 4 of the English Act 18 & 19 Vict., c. 67.

Recovery of noting expenses.

§ 536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedy for the recovery of the expenses incurred in noting the same for non-acceptance, or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

NOTE—This section corresponds with § 5 of the 18 & 19 Vict., c. 67. At common law such expenses, when recoverable at all, could only be recovered as unliquidated and special damages. See *Rogers* v. *Hunt*, 10 Exch. 474. The enactment, it is to be observed, applies both to inland and foreign instruments.

Procedure.

§ 537. Except as provided by §§ 532–536, both inclusive, the procedure in suits under this chapter shall be the same as the procedure in suits under Chapter V.

Application of chapter.

§ 538. Sections 532–537, both inclusive, apply only to—

(*a*) the High Court of Judicature at Fort William, Madras and Bombay;

(*b*) the Court of the Recorder of Rangoon;

whether adhesive or impressed stamps shall be used; and in the case of hundís to regulate the size of the paper on which they are written.

Adhesive stamps. § 10. The following instruments may be stamped with adhesive stamps, namely:—

(*a*). Instruments chargeable with the duty of *one* anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(*b*). Bills of exchange, cheques and promissory notes drawn or made out of British India; (*c*) Notarial acts.

Cancellation of adhesive stamps. § 11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again.

And whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

NOTE.—The provisions of this section are much simpler than those of § 24 of the English Stamp Act, 1870, which requires the stamp to be cancelled by the person, whose duty it is to cancel it, writing across the stamp his name or initials, together with the true date of his writing it.

Instrument on impressed stamp. § 12. Every instrument written upon paper stamped with an impressed stamp, shall be written in such manner that the stamp may appear on the *face* of the instrument, and cannot be used for, or applied to any other instrument.

NOTE.—See §§ 13, 14, as to more than one instrument being written on the same paper.

Indian instruments. § 16. All instruments chargeable with duty and executed by any person in British India, shall be stamped before or at the time of execution.

NOTE.—But see § 44, *post*.

Bills, notes and § 18. The first holder in British India of any bill of exchange, cheque, or promissory note, drawn or made out of

British India shall, before he presents the same for acceptance or payment, or indorses, transfers, or otherwise negotiates the same in British India, affix thereto the proper stamp, and cancel the same: Cheques drawn out of India.

Provided that if, at the time, any such bill, cheque, or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by § 11, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

§ 19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs, or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale :— Conversion of amount expressed in certain currencies.

One pound sterling or pound currency is equivalent to ten rupees.

One hundred francs are equivalent to forty rupees.

One Mexican or China dollar is equivalent to two rupees four annas.

§ 20. Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India, according to the current rate of exchange on the day of the date of the instrument. Conversion of amount in other foreign currencies.

§ 22. Where an instrument contains a statement of current rate of exchange or average price as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject matter of such statement, be presumed, until the contrary is proved, to be duly stamped. Statement of exchange in instrument.

§ 23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein. Instruments reserving interest.

Facts affecting duty to be set forth.

§ 27. The consideration (if any), and all other facts and circumstances affecting the chargeability of any instrument with duty, shall be fully and truly set forth therein.

Duties, by whom payable.

§ 29. In the absence of an agreement to the contrary, the expense of providing the proper stamps shall be borne—

(*a*) In the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57 and 60, (*a*) and (*b*) of the first schedule, by the person drawing, making or executing such instrument.

Instruments not duly stamped inadmissible in evidence, &c.

§ 34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person, or by any public officer, unless such instrument is duly stamped.

Provided that :—

Proviso

1st. Any such instrument, not being an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.

Instruments admissible on payment of duty and penalty.

And in certain criminal proceedings.

2nd. Nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal court other than a proceeding under Chapter XL. or Chapter XLI. of the Code of Criminal Procedure, or Chapter XVIII. of the Presidency Magistrates Act.

Admission of instruments not to be questioned.

3rd. When an instrument has been admitted in evidence, such admission shall not, except as provided in § 50, be called in question at any stage of the same suit or proceeding, on the ground that the instrument has not been duly stamped.

Power of payee to stamp bills, notes and cheques

§ 44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary stamp, and upon cancelling

the same in manner hereinbefore provided may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid. Receiver by him unstamped.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

§ 51. Subject to such rules as may be made by the Governor-General in Council as to the evidence which the collector may require, allowance shall be made by the collector for impressed stamps spoiled in the cases hereinafter mentioned, namely:— Allowance for spoiled stamps.

(*a*) The stamp on any paper inadvertently and undesignedly spoiled, obliterated, or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person.

(*b*) The stamp used, or intended to be used, for any bill of exchange, cheque or promissory note, signed by, or on behalf of, the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which being a bill of exchange, or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon.

(*c*) The stamp used, or intended to be used, for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance, or accepted or indorsed, or being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular,

except in the correction of such omission or error as aforesaid with the spoiled bill, cheque or note.

Penalty for executing, &c., instruments not duly stamped.

§ 61. Any person drawing, making, issuing, indorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

Any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped,

shall for every such offence be punished with fine, which may extend to 500 rupees;

Provided that, when any penalty has been paid in respect of any instrument under § 34, § 37, or § 50, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Penalty for failure to cancel adhesive stamp.

§ 62. Any person required by § 11 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punished with fine, which may extend to 100 rupees.

Penalty for omission to comply with provisions of § 27.

§ 63. Any person who, with intent to defraud the Government of any duty,

(*a*) executes any instrument in which all the facts and circumstances required by § 27 to be set forth in such instrument are not fully and truly set forth, or,

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine, which may extend to 5,000 rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

§ 66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine, which may extend to 1,000 rupees.

§ 67. Whoever, with intent to defraud the Government of duty, draws, evades or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, indorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of such bill or note, or in any manner negotiates the same, Penalty for post-dating bills, &c.

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force, For other devices to defraud the revenue.

shall be punished with fine, which may extend to 1,000 rupees.

SCHEDULE I.

	STAMP.
No. 11. Bill of exchange or promissory note, not being a cheque, bond, bank note, or currency note.	
(*a*) When payable on demand and the amount exceeds Rs. 20	One Anna
(*b*) When payable otherwise than on demand, but not more than one year after date or sight :	

		If drawn singly			If drawn in set of two, for each part of the set.			If drawn in set of three, for each part of the set.		
	Rs.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
If the amount of the bill does not exceed	200		2	0		1	0		1	0
If it exceeds 200 and not exceeds	400		4	0		2	0		2	0
,, 400 ,,	600		6			3	0		2	0
,, 600 ,,	1,000		10	0		5	0		4	0
,, 1,000 ,,	1,200		12	0		6	0		4	0
,, 1,200 ,,	1,600	1	0	0		8	0		6	0
,, 1,600 ,,	2,500	1	8	0		12	0		8	0
For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000 .		1	8	0		12	0		8	0
For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 .		3	0	0	1	8	0	1	0	0
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000 . . .		6	0	0	3	0	0	2	0	0
(*c*) When payable at more than one year after date or or sight . . .		The same duty as a bond (No. 13) for the amount of such bill or note.								

No. 18 Bond—	
Not exceeding Rs. 10	As. 2
,, ,, 50	,, 4
,, 100	,, 8
For every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000	,, 8
And for every Rs. 500 or part thereof in excess of Rs. 1,000	Rs. 2-8

STAMP.

No. 19. Cheque for an amount exceeding twenty rupees . One Anna.

No. 41. Letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn . . . . . One Anna.

No. 45. Notarial act, that is to say, any instrument, indorsement, note, attestation, certificate or entry made or signed by a notary public in the execution of the duties of his office or by any other person lawfully acting as a notary public . . . . . One Rupee.

SCHEDULE II.

Instruments exempted from Stamp Duty.

15. Receipt.—

(*a*) Indorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity, or other periodical payment thereby secured.

17. Transfers by indorsement:—

(*a*) Of a bill of exchange, cheque or promissory note.

APPENDIX II.

FORMS.

No. 1. Inland Bill of Exchange.

Rs. 1,000.

Calcutta, 1st January, 1882.

Three months after date pay to our order the sum of one thousand rupees, for value received.

Andrews and Co.

To Messrs. Brown and Sons, Agra.

No. 2. Foreign Bill of Exchange.

No. 025. Exchange for £100.

Calcutta, 1st January, 1882.

Six months after sight of this first of Exchange (second and third unpaid), pay to the order of Mr. John Charles one hundred pounds, for value received, and charge the same to account of Messrs. Smith and Co. against your letter of credit No. 21.

James Andrews.

To Mr. J. Brown, London.

No. 3. Foreign Bill of Exchange.

No. 015.

London, 1st February, 1882. For Rs. 550 — 8 — 0.

At sixty days after sight of this first of Exchange (second and third unpaid), pay to the order of Messrs. Charles and Co. five hundred and fifty rupees, eight annas, which place to account shipment of copper per "Swallow."

Value received. Andrews and Co.

To Messrs. Brown and Sons, Calcutta.

No. 4. Promissory Note.

Rs. 1,000.

Calcutta, 1st January, 1882.

On demand I promise to pay to Mr. John Charles or order one thousand rupees, with interest at six per cent. per annum until payment, for value received.

John Brown.

No. 5. French Bill.[1]

Paris, le . B. P. 1,000 fr.

A deux mois de vue il vous plaira payer par cette seule de change à l'ordre de M. le somme de mille francs, valeur en marchandises (*ou* en compte, *ou* en argent, &c.), sans autre avis de

Votre serviteur,

A Messieurs V. Bonner & Cie, Dufour.
Au Havre.

No. 6.[2] Notice of Dishonour [or Protest] to Drawer.

[Date and address.]

Take notice that a bill, for £ drawn by you under date the on and payable at , has been dishonoured by non-payment* [*or* non-acceptance], and that you are held responsible therefor.

(Signed) J. S. . .

* N.B.—In the case of foreign bill add "*and protested*," if it has been noted or protested.

No. 7. Notice of Dishonour [or Protest] to Indorser.

[Date and Address.]

Take notice that a bill, for £ drawn by under date the on and

[1] See *Bravard-Demangeat*, 7 ed. p. 276.

[2] This and the two following forms are those given in the schedule to the Bills of Exchange Bill, 1881.

payable at , and which bears your indorsement, has been dishonoured by non-acceptance [*or* non-payment],* and that you are held responsible therefor.

(Signed) J. S. . .

* N.B.—In the case of a foreign bill add "*and protested*," if it has been noted or protested; see §§ 102, 104.

No. 8. Notice to Drawer of Partial Acceptance.

[Date and Address.]

Take notice that a bill, for £ drawn by you under date the on , has been accepted by him for £ only, and that you are held responsible for the balance and expenses.

(Signed) J. S. . .

No. 9. English Protest for Non-Ac

On the day of one thousand eight hundred and eighty , I, [James Brown], Public Notary, by lawful authority and sworn dwelling in L in the county of in the United Kingdom of Great Britain and Ireland, at the request of C. D. of . . . [or of the holder] did exhibit the original bill of exchange, whereof a true copy is on the other side written, unto E. F. at his counting-house [*or* unto a clerk in the counting-house of E. F.], the person upon whom the same is drawn, and demanded acceptance thereof, and he answered [that it would not be accepted at present, *or* as the case may be].

Wherefore, I the said Notary, at the request aforesaid, did and do by these presents protest against the drawer of the said bill, and all other parties thereto, and all others concerned for all costs exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of acceptance of the said bill. Thus protested in the presence of W. S. and T. R., witnesses.

Seal.

Which I attest,
James Brown,
Notary Public of———

[1] See *Brooks' Notary*, ed. 5, pp. 214, 222, and *Chitty's Commercial Law*, vol. 4, p. 344.

No. 10. Act of Honour.

On the day of , one thousand eight hundred and eighty . I [James Brown], Notary Public, duly admitted and sworn, dwelling in [Liverpool], in the county of , in the United Kingdom of Great Britain and Ireland, do hereby certify that the original bill of exchange for pounds, of which a copy is on the other side written (and protested for non-payment) was this day exhibited unto C. D. of [Liverpool], one of the firm of [Smith & Co.], who declared before me that the said firm would pay the amount of the said bill for the honour of [James & Co.], the indorsers holding the drawers and all prior indorsers, and all other proper persons, responsible to them the said [Smith & Co.] for the said sum, and for all interest, damages, and expenses. I have therefore granted this notarial act of honour accordingly.

Seal.

Which I attest,
James Brown,
Notary Public of Liverpool.

No 11. French Protest for Non-Acceptance.[1]

L'an le à la requête du sieur négociant patenté, demeurant à élisant domicile en ma demeure.

J'ai soussigné, sommé et interpellé le sieur N. au domicile indiqué au titre ci-dessus transcrit à rue où étant j'ai parlé à de présentement accepter, pour payer à l'échéance, la lettre de change ci-dessus transcrite, de la somme de lui déclarant qu'à défaut je protestais toutes pertes, dépens, dommages et intérêts du renvoi de la-dite lettre de change, à qui de droit, change, rechange et autres frais, aux risques, périls et fortune de qui il appartiendra. Lequel a répondu que (réponse) et a signé (signature) [ou sommé de signer sa réponse, a refusé]. Laquelle réponse j'ai

[1] *Bravard-Demangeat*, 7 ed. 278. The witnesses, though usual, are not necessary.

pris pour refus d'acceptation et j'ai réitéré les protestations ci-dessus faites sous toutes réserves.

Le tout fait en présence et assisté de J. B., demeurant à L—— et de T. S., demeurant à M—— témoins français, majeurs, lesquels ont avec moi signé le présent,[1] dont acte, duquel j'ai, au dit domicile, et parlant comme dessus, laissé au susnommé copie, ainsi que de la-dite lettre de change. Le coût est de . . .

(Signatures)

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(Signatures)

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